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Publications

# SEXUAL OFFENCES AGAINST CHILDREN

Volume 1

Canada





CAI  
J 800  
- 81501  
V.1

# Sexual Offences Against Children

## Volume 1

Report of the Committee on Sexual Offences  
Against Children and Youths

appointed by

The Minister of Justice and Attorney General of Canada  
The Minister of National Health and Welfare

Canada





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## Committee on Sexual Offences Against Children and Youths

August, 1984

The Honourable Donald J. Johnston  
P.C., M.P.  
Minister of Justice and  
Attorney General of Canada

The Honourable Monique Bégin  
P.C., M.P.,  
Minister of National Health  
and Welfare

Dear Mr. Johnston and Madame Bégin:

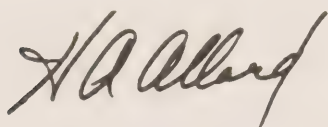
In accordance with the Terms of Reference assigned on February 16, 1981, we have inquired into and report upon the "prevalence in Canada of sexual offences against children and youths" and "the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

In undertaking our mandate, we have received valuable assistance and support across Canada from all levels of government; the helping professions and many community and voluntary associations. Our findings show that vital changes must be made in order to afford Canadian children and youths better protection from all forms of child sexual abuse and exploitation.

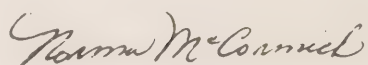
The actions we propose provide a rational and co-ordinated framework whose implementation would assure a level of protection that is essential for young persons to have against sexual offences. In recognition of the child's vulnerabilities and special needs, efforts to provide better assistance and protection for sexually abused children and youths must be assigned high priority by the Government of Canada. These activities must be undertaken on a co-operative basis with the provinces and non-governmental organizations, and must be strongly co-ordinated.



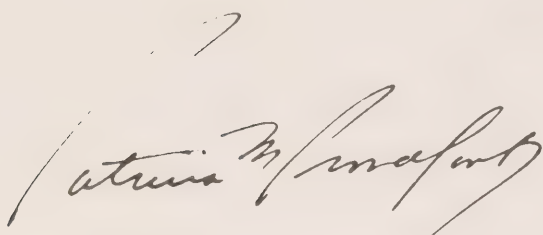
We respectfully submit our recommendations. We do so unanimously.



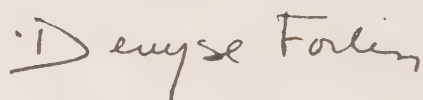
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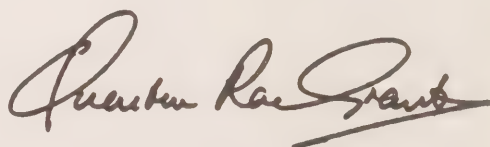
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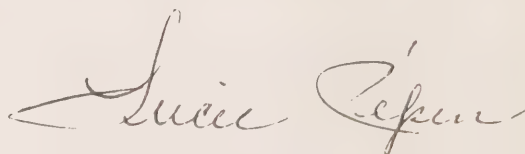
Doris Ogilvie



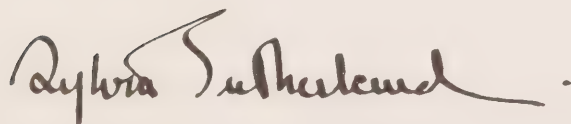
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Lucie Pépin



Sylvia Sutherland



Robin F. Badgley  
Chairman

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## Part I

# Terms and Recommendations



## Chapter 1

# Work of the Committee

The Minister of Justice and Attorney General of Canada and the Minister of National Health and Welfare of the Government of Canada announced the establishment of the *Committee on Sexual Offences Against Children and Youths* on December 19, 1980. The charge given the Committee was “to enquire into the incidence and prevalence in Canada of sexual offences against children and youths and to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation”. The Committee was instructed to obtain “comprehensive factual information” about these issues and also to “examine the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes”.

## Terms of Reference

The Committee was assigned its specific Terms of Reference when Members were appointed on February 16, 1981. The establishment of the Committee was complementary to the announcement by the Minister of Justice of proposals containing amendments to sexual offences in the *Criminal Code*. The Minister’s statement noted that “further amendments to the *Criminal Code* will be considered, if necessary, following receipt of the report and recommendations of the Committee”.

The Terms of Reference given the Committee were:

1. The Committee on Sexual Offences Against Children and Youths is appointed by the Minister of Justice and the Minister of National Health and Welfare to conduct a study to determine the adequacy of the laws in Canada in providing protection from sexual offences against children and youths and to make recommendations for improving this protection.
2. The Committee is asked to ascertain the incidence and prevalence of sexual abuse against children and youths, and of their exploitation for sexual purposes by way of prostitution and pornography. In addition, the Committee is asked to examine the question of access by children and youths to pornographic material. The Committee is asked to examine the relationship between the enforcement of the law and other mechanisms used by



the community to protect children and youths from sexual abuse and exploitation.

3. The Committee will collect factual information on and examine *Criminal Code* sexual offences and offences under related laws which either expressly refer to children and youths as victims or which are frequently committed against children and youths.

4. In particular, the following matters are to be examined:

The elements of the offences with special attention to issues of age and consent and related considerations of evidence and publicity.

The incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general.

Whether such offences are likely to be brought to the attention of the authorities; whether they are likely to be prosecuted and, if prosecuted, are likely to result in convictions.

The effectiveness of criminal sanctions and methods other than the application of criminal sanctions in dealing with the types of conduct involved in these offences.

5. The study is to be completed within two years from the time of establishment of the Committee, and its recommendations will be contained in a report which will be made public. Officials from the Departments of Justice and National Health and Welfare will be available for consultation and will provide any assistance the Committee may require for the purpose of facilitating its work.

In reviewing its assigned Terms of Reference, the Committee assessed available sources of information, identified issues for which research information was required and designed studies to be undertaken. Because of the scope of the research proposed, following its third meeting the Committee requested that its term of operation be extended to three years. This request was approved. During the course of its review, the Committee held 14 meetings.

## Members of the Committee

In announcing the establishment of the Committee on December 19, 1980, the Ministers' statement noted that in addition to appointing laymen, its composition was to include "representatives from the fields of sociology, law, medicine, nursing and social welfare". The Members were informed that "subject to its Terms of Reference, the Committee is to operate independently". Members of the Committee were:

**Herbert A. Allard**, B.A., B.S.W., Senior Judge, Family Division, the Provincial Court of Alberta.

**Denyse Fortin**, B.A., L.L.L., Director of Continuing Legal Education, Quebec Board of Notaries. Visiting Professor, Faculty of Law, University of Montreal. Member, Committee on the Operation of the Abortion Law, Government of Canada (1975-77).

**Paul-Marcel Gélinas**, B.A., M.S.W., Director General, Canadian Mental Health Association, Quebec Division. General Secretary, International Year of the Child (Quebec, 1979).

**Elizabeth S. Hillman**, M.D., F.R.C.P. (C)., Professor of Pediatrics, Faculty of Medicine, Memorial University. President, Medical Council of Canada (1981-82).\*

**Norma McCormick**, B.A., University of Manitoba. Director, Day Nursery, Health Sciences Centre, Winnipeg ( -1982). Child and Family Services Planner (1982-84). Administrator Manitoba Adolescent Treatment Centre (1984- ).

**Doris Ogilvie**, B.A., LL.B., LL.D., (Hon.)., Former Deputy Judge of the Juvenile Court and Provincial Court of New Brunswick. Chairperson, International Year of the Child (1979). Member, Royal Commission on the Status of Women (1967-70).

**Lucie Pépin**, R.N., President, Canadian Advisory Council on the Status of Women. National Co-ordinator of Clinical Research, World Health Organization - Collaborating Centre, Canadian Committee for Fertility Research.

**Patricia M. Proudfoot**, B.A., LL.B., LL.D., (Hon.)., The Supreme Court of British Columbia and Deputy Judge of the Supreme Court of the Yukon Territory. Commissioner, British Columbia Royal Commission on the Incarceration of Female Offenders (1978).

**Quentin A. Rae-Grant**, M.B., Ch.B., D.P.M., F.R.C. Psych., F.R.C.P.(C)., Psychiatrist-in-Chief, Hospital for Sick Children. Professor and Vice-Chairman, Department of Psychiatry, and Chairman, Division of Child Psychiatry, Faculty of Medicine, University of Toronto. President, Canadian Psychiatric Association (1982-83).

**Sylvia Sutherland**, Dipl. A.A., B.A., Commentator, CHEX Radio 98 TV 12, (Peterborough). Member, Canadian Delegation 35th General Assembly, United Nations (1980-81). Vice-President, United Nations Association of Canada (1982- ).

**Robin F. Badgley** (Chairman), Professor of Behavioural Science, Faculty of Medicine, (cross-appointed Professor of Sociology), University of Toronto. Member, Advisory Committee on Medical Research, World Health Organization/Pan American Health Organization (1977-84).

In undertaking its work, the Committee drew continuously on assistance provided by officials from the Department of National Health and Welfare and the Department of Justice. These colleagues who served respectively as Senior Medical Advisor and Senior Counsel to the Committee were:

**Robert H. Lennox**, M.D., D.T.M., M.P.H., F.R.C.P.(C), Chief, Child and Adult Health, Department of National Health and Welfare (1968-1982). Medical Advisor, International Health Affairs, Department of National Health and Welfare (1982- ).

**Bernard Starkman**, B.A., LL.B., Dip. de Dr. Comp., LL.M., of the Bars of Ontario and Manitoba. Special Advisor, Medical-Legal Policy, Policy Planning and Criminal Law Amendments, Department of Justice. Sessional Professor of Law, Faculty of Law (Common Law Section), University of Ottawa.

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\*Participated in the work of the Committee until October, 1982. Resigned to assume academic responsibilities in Uganda.

Dr. Lennox was instrumental in facilitating the development of the National Hospital Survey, co-ordinating the review of the classification of medical diagnoses and assembling information on sexually transmitted diseases. As Senior Counsel to the Committee, Mr. Starkman helped to ensure that, in relation to the Committee's Terms of Reference, the relevant legal issues were taken into account in the design of the research, in the collection of information and in the analysis of the research findings. At the Committee's request, he also made valuable contributions to the classification of offences and the analysis of matters related to consent. The Committee relied heavily upon the sound judgment and wise counsel of these two colleagues.

In conducting its research, the Committee received the support and assistance from a large number of persons and institutions. This co-operation came directly from many Canadians who provided information to the Committee in meetings, by the submission of briefs and through direct participation in the National Population Survey. The scope of the Committee's mandate required that it seek information concerning sexual offences against children from all parts of the country. In this regard, the Committee's work was directly supported by voluntary organizations, different federal, provincial and municipal public services, knowledgeable administrators and experienced professionals.

The nature of the remarkable contribution made by many persons and services is attested to by the comprehensive information which was made available to the Committee from many different sources. Without this valuable assistance, generously given, there is no doubt that the intent of the study could not have been realized.

## Administrative Staff

During each phase of its review, the Committee was assisted by a remarkably capable administrative and research staff. As Administrator to the Committee, Sandra Nahon effectively and efficiently co-ordinated each aspect of the complex and extensive research that was conducted. The dedicated work of this gracious and talented colleague constituted the linch-pin of the Committee's endeavour to undertake and complete its mandate. By the nature of her contribution, she effectively served as a Member of the Committee.

The Committee also warmly acknowledges the considerable contribution, personal concern and frequent voluntary overtime work of Mieko Ise and June Rilett, both of whom so capably contributed to the development, design and production of the Report.

**Mieko Ise**

**Sandra Nahon, Administrator**

**June Rilett**



## Research Associates

Representing several disciplines, the Senior Research Associates to the Committee were responsible for the mounting and undertaking of the major research studies conducted by the Committee. Their remarkable capacity to integrate empirical findings in relation to relevant legal and social issues, their meticulous scholarship and their unstinting diligence significantly molded the work undertaken by the Committee. There is no doubt that without their special experience and training, the work of the Committee could not have been accomplished.

**Kevin Chaisson**, (computer programming, statistical analysis).

**Elisabeth Hurd**, B.A., M.S.W., (National Child Protection Survey).

**Phyllis M. Jensen**, R.N., B.A., M.A. (computer programming, statistical analysis).

**Kristina J. Kijewski**, B.Sc., M.A. (National Hospital Survey and National Corrections Survey).

**Stephen J. Kloepfer**, B.A., LL.B., LL.M., Director of Legal Research. (legal review, design of legally pertinent questions in the national surveys, and legal analysis of the findings obtained).

**Wendy Leaver**, B.S.W. (National Police Force Survey and National Survey of Juvenile Prostitution. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

**Brian M. Levine**, B.A. (National Child Protection Survey, National Surveys on the Production, Distribution, Importation and Seizures of Pornography and National Survey of Juvenile Prostitution).

**Peter Petruzzellis** (National Surveys on the Production, Distribution, Importation and Seizures of Pornography. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

## Consultants

The scope of the Committee's review was substantially augmented by the direct contribution to the preparation of the Report given by several consultants having special knowledge and experience in relation to particular issues pertaining to child sexual abuse. Their significant contribution charted important dimensions of matters specified in the Committee's Terms of Reference. The Committee sincerely acknowledges its indebtedness to these consultants.

**John W. Ackroyd**, Chief of Police, Metropolitan Toronto Police Department.

**Cynthia Carver**, M.D., M.P.H., Assistant Medical Health Officer, Health Department, City of Regina.

**William G. French**, L.R.C.P. & S., L.R.F.P. & S., D.P.H., Executive Director, Medical Public Health, Manitoba Department of Public Health.

**Helen Haffey**, Director of Medical Records, The Hospital for Sick Children.

**C. M. Hatton**, Research Director, Canadian Gallup Poll Limited.

**Miriam Jones**, M.A., Department of English, York University.

**A. G. Jessamine**, M.B., Ch.B., Chief, Field Epidemiology Division, Bureau of Epidemiology Laboratory Centre for Disease Control, Department of National Health and Welfare.

**Shaun MacGrath**, Chairman, Ontario Police Commission.

**Patricia Matusko**, R.N., Program Co-ordinator, S.T.D. Control, Manitoba Department of Health.

**Paul Reed**, Ph.D., Director, Research and Analysis Division, Statistics Canada.

**Barbara Romanowski**, M.D., F.R.C.P.(C.), Director, Social Hygiene Services, Alberta Social Services and Community Health.

**Elizabeth Taylor**, Head, Nosology Reference Centre, Health Division, Statistics Canada.

**Margaret W. Thompson**, Ph.D., Professor of Medical Genetics and Paediatrics, Faculty of Medicine, University of Toronto. Senior Staff Geneticist, Department of Genetics, The Hospital for Sick Children.

The Committee learned immeasurably from the experience and counsel of the many persons who facilitated or participated in different parts of the study. We consider ourselves fortunate to have been afforded the opportunity to have worked with these capable and concerned persons. It is with deeply felt appreciation that we acknowledge their contributions.

## The Committee's Approach to Research

Throughout his career, the legal philosopher Roscoe Pound distinguished between what he called '*the law in the books*' and '*the law in action*'. This distinction between what the law says and how the law actually operates is relevant to the Committee's work. Canadian law is at many points sufficiently elastic to allow for police, child protection, medical, prosecutorial and judicial discretion in dealing with sexual assailants and their victims. The exercise of this discretion is influenced by both social and legal considerations.

The challenge of research dealing with crime, in this instance sexual offences against children and youths, is two-fold. First, such research must seek to identify as objectively as possible those facts which, whether legally relevant in the formal sense or not, may influence the way in which the helping and enforcement services deal with the problem. The second challenge is to test, by means of collecting pertinent information, the validity of the assumptions on which particular legal doctrines appear to be based.

In undertaking its research, the Committee grounded its approach upon a number of assumptions about how information pertaining to its mandate could be most effectively and validly obtained. **Foremost among these assumptions**

**was the Committee's recognition of the need to anchor its research on the foundation of the law and to seek directly from primary sources information pertinent to these issues.** In seeking to learn about the experience of victims of sexual offences, the Committee believed that it was essential to obtain such information directly from persons who had experienced unwanted sexual acts. While recognizing that these are intensely personal concerns, the Committee believed that persons who had been victims would be willing to provide such information if given firm assurance about the confidentiality of the replies received. It was on the basis of this assumption that a national population survey was undertaken which sought to obtain information about the occurrence of sexual offences.

Children who are victims of sexual offences may turn or become known to a number of helping services, each of which provides important but different types of assistance. With respect to these services, the Committee assumed that no single source should be relied upon as the exclusive basis upon which to derive general findings about the extent and nature of sexual offences against children.

There is a paradox in relation to information about criminals and victims of crime in Canada. While there is little systematic documentation about their situation and experience, there are rich veins of potential information which have seldom been drawn upon in this regard. These largely untapped sources are the files and records of public services, notably, those of the police, hospitals, child protection and correctional services which contain detailed findings about child sexual abuse. Little of this information surfaces in the form of official agency or service statistics, with the result that it is often assumed that such information is not available or may not exist.

In order to draw directly upon the basic information available to these services and to provide a complementary assessment of the types of assistance and protection afforded victims, the Committee undertook several national surveys of cases of child sexual abuse known to public services. Despite the fact that the Committee was federally appointed, and in some instances was seeking information on matters largely under provincial jurisdiction, without exception in undertaking these surveys, the Committee received invaluable co-operation from each of the main public services involved across Canada.

**In considering the reform of the law concerning socially and legally complex issues, such as those set by the Committee's mandate, the Committee believes that it is not only feasible but mandatory to seek the full participation of the relevant public services within a firm framework of federal-provincial co-operation. Issues of this kind transcend institutional and political boundaries. If their dimensions are to be fully understood and acted upon in the provision of services and amendment to the law, then all pertinent resources must be marshalled to attain these purposes.**



Reflecting the multi-faceted dimensions of its Terms of Reference, each phase of the Committee's study was undertaken on the basis of an interdisciplinary perspective with respect to these issues. While the virtues of teamwork may be legion, its practice in relation to undertaking research involving the close collaboration of different disciplines may be a different matter. Each discipline has clothed certain words which are in general usage with special connotations and different ideas abound about the meaning and purpose of research.

In the Committee's experience, adapting to an interdisciplinary perspective involving close collaboration in undertaking research is neither easy nor readily accomplished. The integration of different perspectives in this study developed as a result of much patience and tolerance between Members with respect to how and why certain information should or should not be obtained. In retrospect, the Committee appreciates the unusual opportunity afforded its Members to work together and to debate, often staunchly, issues from different disciplinary perspectives. **One by-product of this work has been the Committee's realization, unanimously endorsed, that in undertaking the review of complex social and legal issues, such as those assigned in the Terms of Reference of this study, it is essential that these questions be considered from a balanced and integrated interdisciplinary perspective. No discipline, by itself, has the requisite scope of conceptual resources to encompass sufficiently the complex dimensions of such issues.**

In our judgment, failure to adopt an integrated interdisciplinary perspective is likely to result in a one-sided or partial consideration of issues and may lead to the formulation of proposals concerning the reform of services or of the law which will likely do little to redress the problems or deal with the fundamental issues at stake. Distrust in the efficacy of such proposals should be proportional to their speculative range. **On the basis of our experience, we believe that an integrated interdisciplinary approach is requisite when similar issues involving the reform of the law may be considered.**

Inherent in the Committee's approach to research was the assumption that basic information must be assembled on a uniform basis in each component of its work. Prevailing fashions concerning how research information is collected in one field may preclude the possibility of providing answers to questions which are pertinent to other disciplines. On the matter of the victim's age, for instance, questions having legal significance differ substantially from those having medical relevance and the concerns of social survey researchers often ignore those of both professions.

In the design of its research, the Committee strove to obtain and assemble basic information that would be amenable to address the concerns of different perspectives in relation to common issues. In relation to sexual offences, for instance, the Committee found that none of the existing classification systems used by different public services identified the exact nature of the sexual acts committed or was comparable. In this regard, in designing its research the Committee adopted a grounded approach based, where feasible, upon a

detailed specification of the types of sexual acts committed, the circumstances of the offences, the characteristics of victims and offenders and the types of services provided by public agencies.

With respect to issues concerning the possible reform of the law and of its administration, the Committee incorporated a number of basic questions in each national survey. Examples of these questions include:

**What are Circumstances of the Sexual Act?**

Who sexually assaults or exploits young persons? What is the breakdown of these offenders by age and sex? In what manner are they related to their victims, if at all, whether legally or socially? What sorts of employment are they engaged in?

Who are the child victims of sexual assaults or exploitation? What is the breakdown of these child victims by age and sex? In what manner are they related to their assailants, if at all, whether legally or socially?

What kinds of sexual acts are engaged in between the offender and the child? How does the offender sexually touch or assault the child? Conversely, how does the offender seek to be touched by the child?

How does the sexual touching occur? By force, threats or inducements of some kind? How often are weapons used or threatened to be used? How often is the child physically or emotionally injured by the assault? How often is the act genuinely consensual between the parties?

Where does the act take place? How often is either the offender, the victim, or both, under the influence of alcohol or drugs at the time of the offence?

**What Happens After the Sexual Act Takes Place?**

To whom does the victim turn for help? How much time elapses before the victim tells someone about the incident? If the offence is otherwise disclosed, how did it happen to be disclosed? What length of time elapses before the police, a physician or a child protection agency are notified?

Does the victim seek or receive medical or other forms of treatment?

Is the offender charged with a criminal offence? If not, why not? If so, with what offences is he or she charged?

Is there a child protection proceeding or intervention as a result of the incident? If not, why not? If so, what is the eventual result for the child and the offender?

Is there a criminal court trial as a result of the incident? If not, why not? If so, is the offender convicted? With what offence is the offender convicted?

What sentence does the offender receive? What considerations influence the severity of that sentence? Does the offender, as part of his or her sentence, receive any medical, psychiatric or other form of treatment? Does he or she at some point get paroled, or placed on mandatory supervision?

If the offender is sent to prison for a sexual offence against a young person, is that his or her first conviction for a sexual offence? If not, what was his or her previous criminal record in this regard? Does it disclose other sexual offences against children? If so, what sorts of sentences did he or she



receive on those earlier occasions? To what extent does his or her later sentence take into account that he or she has failed either to be "rehabilitated" or to be deterred from again offending sexually against a child?

More generally, who makes the key institutional decisions at various stages? How are they held accountable and by whom?

In adopting this approach, the Committee sought to obtain both basic and applied types of information. The listing of comparable questions in each of the national surveys served as a common denominator which permitted a comparison to be made on a uniform basis between the findings obtained from different sources.

The research approach adopted by the Committee which sought to assemble comprehensive and detailed information stands in sharp contrast with that followed by a number of major proposals for reform of sexual offences against young persons and adults which have typically proceeded in the face of a conspicuous lack of empirical documentation. In the Committee's judgment, firm empirical documentation is a prerequisite to both the reform of the law and to affording better protection for the victims of crime of all ages.

**By describing the wide variety of sexual behaviours which occur, the Committee believes that legislation can be drafted which is more sensitive to the realities of child sexual abuse and to its varying degrees of seriousness for the child and for society. By identifying the practical problems in law enforcement and in the delivery of social and health services, the Committee is convinced that improvements in practice and procedure can be implemented. By determining the nature and extent of child sexual abuse and the effectiveness with which our legal and social institutions react to it, the Committee believes that there is reasonable justification to hope that Canadian children can be better protected.**

## Research Undertaken

The details of each study undertaken by the Committee given in this synopsis are cited more fully in the pertinent sections of the Report preceding the presentation of findings.

## Legislative and Advisory Reports

The reports received by the Government of Canada from legislative and advisory bodies with respect to neglected and abused children constitute an earnest of the Government's long-standing concern with the need to afford better protection for these children. The Committee's review of these official documents served to highlight a number of issues warranting special consideration and further documentation.



## Legal Review

The Terms of Reference established for the Committee required both the collection of empirical research and review of an extensive body of legislation. The dimensions of the latter encompassed a review of:

- Relevant laws enacted at the federal, provincial and municipal levels of government;
- The interpretation of these laws by Canadian courts, as evidenced in reported and unreported legal cases;
- Scholarly commentary in the legal periodical literature on topics pertinent to the Committee's mandate; and
- The operation of these laws from the standpoint of the officials charged with administering them and the persons variously affected by them.

Listed below are the main components of the legal review undertaken by the Committee in relation to sexual offences against children and youths.

*Major Sexual Offences.* A review was undertaken of the origins and legislative histories of the major sexual offences in the *Criminal Code*, tracing the evolution of each offence from its origins in English law, its status under the criminal law of the pre-Confederation provinces, its first introduction into federal criminal law after Confederation and the manner in which it has been amended since that time.

*Parliamentary Debates.* Selected Canadian parliamentary debates (reported in *Hansard*) on proposed criminal law amendments were canvassed in order to gain insights into the motivating forces behind significant legislative amendments. This review included:

- The parliamentary debates preceding the criminal law amendments introduced in 1890;
- The parliamentary debates preceding the first enactment of the *Criminal Code* in 1892; and
- The deliberations of the Standing Committee on Justice and Legal Affairs in 1978, 1981 and 1982 concerning the amendments to the criminal law of sexual offences proposed in Bill C-53.

*Historical Crime Statistics.* At the Committee's request, a special review of Canadian historical crime statistics was undertaken by the Director of the Research and Analysis Division, Statistics Canada. The provision of this information permitted the first detailed historical review to be undertaken of sexual offences against Canadian children and youths. Crime statistics have been assembled on a continuous basis for the period between 1876 and 1973. In relation to charges laid and convictions for sexual offences, these statistics provide an historical perspective concerning changes in: the rate of charges laid; the ratio of convictions to charges; the types and lengths of sentences; conviction rates among different provinces; and the rates of charges and convictions for specific types of sexual offences in which children were victims.

*Provincial Crime Statistics.* Each provincial and territorial Department of the Attorney General was requested to provide the Committee with provincial annual statistics for 1980 and subsequent years on charges, convictions, and sentences handed down with respect to specified offences within the Committee's mandate.

*Major Legal Decisions.* The major legal decisions were reviewed that have interpreted the scope and meaning of:

- *Criminal Code* provisions relating to sexual offences, prostitution and obscenity;
- *Juvenile Delinquents Act* offences relating to juvenile delinquency and contributing to juvenile delinquency;
- Relevant provisions of the *Canada Evidence Act*; and
- Obscenity-related provisions in the *Customs Act*, the *Customs Tariff* and the *Canada Post Corporation Act*.

*Proposed Federal Legislation.* Proposed federal legislation in the area of sexual offences [Bill C-53; young offenders (*Young Offenders Act*); and the law of evidence (Bill C-33, the proposed *Canada Evidence Act*, 1982)] was studied in order to ascertain government initiatives directly relevant to the Committee's Terms of Reference.

*Legal Status of the Child.* Provincial, territorial and federal statutory provisions relating to young persons were reviewed, with particular reference to the different ages at which children attract certain legal rights and capacities.

*Canadian Charter of Rights and Freedoms.* The *Canadian Charter of Rights and Freedoms* and the major judicial decisions reported prior to September 1, 1983 that interpret its broad constitutional provisions were examined with respect to their potential implications for the Committee's legal recommendations.

*Criminal Injuries Compensation Boards.* Each provincial Criminal Injuries Compensation Board was requested to provide the Committee with annual statistics for 1980 and subsequent years concerning the extent to which compensation was sought by, and awarded to, young victims of sexual offences.

*Publicity.* The Committee investigated the extent to which young victims of sexual offences are protected from having their identities publicized once their cases come to the attention of the legal system. Research was conducted with respect to two avenues by which the identities of young sexual complainants might be publicized: newspapers and legal reporting services. With the assistance of Information Services, Department of Justice, the Committee examined 2806 stories concerning sexual offence cases and related matters appearing in 34 Canadian newspapers from May, 1982 to May, 1983.

With respect to the naming of young sexual complainants in official and commercial reporting services, the Committee examined reported cases for the

major sexual offences, looking for instances in which the names of complainants or information tending to identify these young persons were published. The Committee contacted the Chief Justices of each court level from every Canadian jurisdiction and requested a statement of the policy of that court with respect to the naming of young sexual complainants in judicial decisions. Similarly, the editors of the leading Canadian reporting services were contacted and requested to supply the Committee with their policies concerning the publication of the identities of young sexual complainants in their reports.

## Review of Previous Research

In order to draw upon the findings of completed studies, the Committee reviewed a considerable body of reports pertaining to various aspects of its mandate. In addition to the legal review, and in the absence of a comprehensive compendium listing such studies, the Committee conducted an extensive bibliographical search of the main criminological, corrections, medical and social science journals and reports. Notices were published in the journals of several professional and scholarly associations requesting information about relevant cases and studies.

Throughout the Report, the findings of a number of the main Canadian studies are cited in relation to specific issues being considered. The review of completed research provided a necessary baseline for the purposes of identifying issues, gaps in information and the nature of the methodological research problems entailed.

## National Population Survey

The Committee's mandate requested that it examine "the incidence and prevalence of sexual offences against children and youths. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general". In this regard, the National Population Survey was undertaken to obtain information from a representative sample of Canadians concerning their experience of having been victims of sexual offences as children or adults. This survey also elicited information about the purchase of pornography and views concerning the display of pornographic materials.

The Survey's findings constitute a baseline for estimating the extent of sexual offences committed against Canadian children, youths and adults. The survey was undertaken in February, 1983 for the Committee by Canadian Gallup Poll which obtained information from a statistically representative sample of 2008 Canadians age 18 and older living in 210 communities across Canada.



## National Police Force Survey

In order to document the integral role of the police in the detection of sexual offences against children and in the enforcement of the civil and criminal law with respect to suspected offenders, the Committee undertook a National Police Force Survey in which 28 police forces from across Canada participated. In developing the design of the survey, the Committee received assistance from the Canadian Association of Chiefs of Police which informed its Members about the Committee's mandate and its request for assistance in documenting cases of sexual offences against children investigated by the police. The Committee also received a firm assurance of support for its work at the 1981 Meeting of the Provincial Commissioners of Police.

In undertaking the survey, the Committee was particularly indebted to the Metropolitan Toronto Police Force. In the development of the research protocol that was subsequently used to assemble information from the 'general occurrence forms' of other forces, the Metropolitan Toronto Police Force provided both counsel concerning the design of the protocol and gave the Committee permission to pretest it drawing upon its records. The Force also approved the seconding of an experienced police officer to the Research Staff of the Committee to facilitate the mounting of the national survey.

Enforcement services in each province were contacted in order to obtain an assessment of cases of sexual offences against children known to police forces across Canada. The extent of the co-operation received outstripped the resources available to the Committee for this component of its research. An even more extensive national survey of police forces could have been undertaken had time and resources permitted.

With the permission of the Ontario Police Commission, and acting upon its recommendation, the survey was extended to include a cross-section of police forces in cities and towns across Ontario. This extension of the survey permitted the collection of information from a number of smaller forces, some of which had developed special services for children and youths.

The primary source of information in the national survey was the 'general occurrence form' which contains the record of police investigation of a case. Although little of this information is subsequently transposed for purposes of assembling criminal statistics, the Committee found that the 'general occurrence forms' typically contained extensive and detailed accounts of the offences committed.

The forces participating in the National Police Force Survey were:

- St. John's
- Charlottetown
- Halifax
- Fredericton
- Quebec City
- Winnipeg
- Regina
- Edmonton

- Calgary
- Vancouver
- Yellowknife

#### *Ontario*

- Chatham
- Collingwood
- Haldimand-Norfolk
- Hamilton
- Hawkesbury
- Kingston

- London
- Nepean
- Niagara Region
- North Bay
- Ottawa
- Peel
- Peterborough
- Sudbury
- Toronto
- Waterloo
- Windsor

For each participating Police Force, complete information was documented for the full calendar year 1981; in some instances, where a small number of cases was involved, findings were also obtained for 1980. A total of 6203 cases of sexual offences against children and youths investigated by these Police Forces was documented.

In the Committee's judgment, the strength of these findings lies in the unprecedented detail with which they describe the investigation of these offences by the police. It is upon this strong empirical base coupled with information obtained from other surveys that the Committee has grounded a number of its major recommendations for law reform concerning the issues specified in its mandate.

## Child Sexual Assault Homicides

The Homicide Statistics Program established by the Justice Statistics Division of Statistics Canada has assembled information since 1961 on all cases of murder, manslaughter and infanticide reported by enforcement authorities across Canada. At the Committee's request, Statistics Canada provided a special tabulation of 156 homicides having children as victims between 1961-80 that were listed as being sexually motivated or that had involved sexual assaults. On the basis of the information obtained, the Committee assessed the incidence of these homicides, the ages of the children involved, the means used to cause their deaths and compared the proportions of sexual assault homicides involving children and adults.

## Child Protection Services

Child Protection Services established by provincial legislation constitute a requisite and vital component in the provision of assessment, care and protection for sexually abused children. It was in recognition of these special responsibilities that the Committee reviewed several aspects of these services.

*Provincial Child Welfare Legislation.* A legal review was undertaken of provincial and territorial legislation pertaining to child protection and child welfare, and of the major legal decisions interpreting aspects of these laws. This review focussed on provincial statutory definitions of 'a child in need of protection', requirements concerning the duty to report and the establishment of child abuse registers. Provincial and territorial legislation concerning the rules of evidence in proceedings in each jurisdiction and major legal cases interpreting these provisions were also examined.

*Special Community and Social Services.* In the course of undertaking its general research and that concerning the provision of child protection services for sexually abused children, the Committee identified several innovative programs. Examples of these are cited in the Report.

*National Child Protection Survey.* With the co-operation of child protection services in all provinces and the Yukon, a National Child Protection Survey was undertaken in which information was obtained concerning 1438 cases of child sexual abuse. Assistance in undertaking the survey was provided by:

- Newfoundland Department of Social Services
- Prince Edward Island Department of Health and Social Services
- Nova Scotia Family and Child Welfare Association
- New Brunswick Department of Social Services
- Le Comité de la protection de la jeunesse
- Ontario Ministry of Community and Social Services
- The Children's Aid Society of Winnipeg and the Winnipeg Regional Office, Manitoba Department of Community Services and Corrections
- Saskatchewan Department of Social Services
- Alberta Department of Social Services and Community Health
- British Columbia Ministry of Human Resources
- Yukon Department of Health and Human Resources

The survey assembled information concerning sexually abused children and youths in relation to: their social and family circumstances; the offences committed; and the assessment, provision of care and assistance provided by child protection workers. The survey also obtained information concerning the duty to report, the use of child abuse registers and the operation of philosophically different intervention approaches with respect to providing assistance for these children.

The remarkable level of co-operation and assistance provided by provincial child protection services attests to the national recognition of the gravity of the problem and to the need for continuing and effective federal and provincial co-operation for offences whose dimensions and possible resolution transcend jurisdictional boundaries.



## Health Services

In recognition of the essential contribution of health services in the assessment, treatment and protection of sexually abused children, the Committee undertook several studies to obtain information concerning the medical assessment of the physical injuries and emotional harms sustained by victims and the provision of treatment for these children. Following its review of available research, the Committee undertook a National Hospital Survey, reviewed the medical classification of injuries associated with sexual offences, assessed the genetic risks of incest and obtained information concerning live births, abortions and sexually transmitted diseases contracted by children and youths.

*National Hospital Survey.* In each of the national surveys of the population, police forces and child protection services, the Committee sought to obtain information concerning the extent and types of injuries and harms sustained by children who had been victims of sexual offences. The National Hospital Survey, undertaken with the co-operation of 11 major hospitals in eight provinces, was developed to obtain detailed documentation of the medical assessment of sexually assaulted children and youths, the medical examination and treatment of these victims and to provide an assessment of the short and long-term consequences of the physical injuries and emotional harms incurred.

In developing the research protocol for the survey, the Committee received assistance from experienced experts in the field who reviewed the development and pretesting of the protocol and who facilitated the collection of information. The 11 hospitals participating in the survey were:

- Dr. Charles A. Janeway Child Health Centre (St. John's)
- The General Hospital Health Sciences Centre (St. John's)
- Izaak Walton Killam Hospital for Children (Halifax)
- Centre Hospitalier Sainte-Justine (Montreal)
- The Montreal Children's Hospital (Montreal)
- The Children's Hospital for Eastern Ontario (Ottawa)
- The Hospital for Sick Children (Toronto)
- The Children's Hospital of Winnipeg (Winnipeg)
- University Hospital (Saskatoon)
- University of Alberta Hospital (Edmonton)
- Vancouver General Hospital (Vancouver)

The National Hospital Survey obtained information on all reported cases of child sexual abuse which had been medically assessed and for which treatment had been provided at the 11 hospitals between January 1, 1981 and June 30, 1982. Information was obtained for 623 cases.

*Medical Classification of Sexual Assault.* As a component of the National Hospital Survey, the Committee obtained detailed information concerning the types of sexual acts committed, the injuries sustained by victims,

where these had occurred, and the medical diagnoses of the patients' conditions. Because classification systems that accurately identify these conditions are essential to the network of services affording protection for victims of these offences, the Committee reviewed the medical classification of children who had been sexually assaulted. This review was undertaken with the assistance of the Head of the Nosology Reference Centre, Statistics Canada and the Director of Medical Records, Hospital for Sick Children (Toronto).

*Genetic Risks of Incest.* With the assistance of an internationally respected geneticist, the Committee reviewed the genetic risks to children of incest with respect to the likelihood of their experiencing more hereditary disabilities than children born from other types of parents.

*Sexually Transmitted Diseases.* In order to assess the extent to which children who had been sexually assaulted were at risk of contracting a sexually transmitted disease, the Committee sought to obtain this type of information in its national surveys. The Chief, Field Epidemiology Division of the Bureau of Epidemiology, Department of National Health and Welfare provided the Committee with national statistics on the reported distribution of gonococcal infections among children and reviewed the findings obtained by the Committee.

The Committee also received assistance in this component of its research from Social Hygiene Services, Alberta Department of Social Services and Community Health, and the Sexually Transmitted Disease Control Program, Manitoba Department of Public Health. The latter Department provided the Committee with information for all children age 16 and younger who were reported to have been examined and/or treated with respect to sexually transmitted diseases.

## Convicted Offenders

*Sentencing of Offenders.* An examination was made of the sentencing provisions in the *Criminal Code* relating to offences of a sexual nature and of the special provisions pertaining to dangerous offenders, as well as of the judicial elaboration of the principles of sentencing. The key provisions and legal decisions were reviewed in relation to: the *Parole Act* and regulations; the *Penitentiary Act* and regulations; and the *Prisons and Reformatories Act*.

*National Corrections Survey.* With the co-operation of 10 correctional services, information was assembled about 703 convicted child sexual offenders who were in custody or under supervision on February, 1982. The services participating in the National Corrections Survey were:

- |                        |   |
|------------------------|---|
| • Newfoundland         | Adult Corrections Division, Department of Justice                     |
| • Prince Edward Island | Provincial Probation and Family Court Services, Department of Justice |
| • Nova Scotia          | Department of Corrections, Research and Planning                      |

- New Brunswick      Correctional Services Division, Research and Planning
- Ontario              Ministry of Correctional Services, Research and Planning
- Manitoba            Department of Community Services and Corrections
- Alberta              Ministry of Correctional Services Research and Planning
- British Columbia    Corrections Branch, Research Analysis Section, Ministry of the Attorney General
- Yukon                Whitehorse Correctional Centre
- Government of Canada    Correctional Service Canada, Operational Information Services

Information concerning all known convicted child sexual offenders was obtained in seven jurisdictions and a substantial proportion of cases was documented in the remainder. The participating correctional services provided expert counsel, reviewed the research protocol and facilitated the collection of information.

On the basis of the information obtained in the National Corrections Survey, an assessment was made of the social backgrounds of these offenders, the circumstances of the sexual offences committed against children and youths and certain elements of the offences which may be considered on sentencing. For offenders for whom such information was available, findings were obtained concerning assessments of their mental state and the types of treatment and counselling received while in custody or under supervision.

The recidivism experience of the convicted child sexual offenders was considered in relation to all reported previous convictions and those having committed sexual offences. With the permission of Correctional Service Canada, information was obtained on all convicted child sexual offenders who had been found dangerous on sentencing. The situation and experience of these 62 offenders was considered in relation to similar findings obtained about other convicted child sexual offenders.

## Juvenile Prostitution

The Committee was asked to ascertain the extent of exploitation of children and youths by way of prostitution. "Juvenile prostitution" has no specific status in Canadian law. It is dealt with under more general legislation pertaining at the federal level to juvenile delinquency and the regulation of prostitution generally, and at the provincial level under the provisions of child welfare statutes.

In relation to prostitution involving young persons, the Committee reviewed the provisions of the *Criminal Code* pertaining to soliciting, procuring, living on the avails of prostitution and keeping a bawdy-house. In order to obtain information about the local regulation of prostitution, the City Clerks of



18 cities across Canada were requested to provide copies of any municipal by-law(s) enacted in relation to this issue. The cities contacted were:

- |                 |             |               |
|-----------------|-------------|---------------|
| • St. John's    | • Hamilton  | • Edmonton    |
| • Charlottetown | • Ottawa    | • Calgary     |
| • Halifax       | • Toronto   | • Vancouver   |
| • Fredericton   | • Winnipeg  | • Victoria    |
| • Quebec City   | • Regina    | • Whitehorse  |
| • Montreal      | • Saskatoon | • Yellowknife |

From these sources, the Committee learned of various local initiatives in these and other communities. The Committee reviewed several studies that had considered juvenile prostitution, but it found none had dealt with more than a small number of cases or had assessed the problem at the national level. In order to obtain such information, the Committee undertook a survey, both directly and in co-operation with a number of local services, in which indepth interviews were held with 229 juvenile prostitutes in eight cities across Canada.

Because of the nature of juvenile prostitution, the youths from whom this information was obtained did not constitute a sample. These interviews provided detailed information about their social background, the process whereby they had become prostitutes, how they customarily met their clients and the nature of their encounters with the police and social services.

## Child Pornography: Production and Accessibility

The Committee's Terms of Reference stipulated that it determine the incidence and prevalence of sexual exploitation of children by way of pornography, and to examine the question of access by children and youths to pornographic material. In relation to these provisions, the Committee obtained information in several of its national surveys (population, police force, child protection and corrections) concerning cases in which children were known to have been exposed to or involved in the production of pornography. In addition, surveys were conducted pertaining to the accessibility by children to pornography and seizures made in relation to the importation of sexually explicit depictions.

*Federal Legislation.* In its legal review of the Canadian law of obscenity, the Committee considered the existing network of federal laws which, taken together, regulate the different manifestations of child pornography. This review included the pertinent sections of the *Criminal Code*, statutes relating to the unlawful importation and seizure of unauthorized goods into Canada (*Customs Act*, *Customs Tariff* and *Canada Post Corporation Act*), and the federal *Broadcasting Act*. Case studies were assembled from a number of sources documenting the kinds of situations dealt with under the pertinent sections of these statutes.

*Provincial and Municipal Enforcement Practices and Guidelines.* On the basis of visits to provincial Departments of Attorneys General and major municipal police forces across Canada, information was obtained on official

provincial guidelines in relation to the distribution and sale of pornography, where these had been established, and on provincial and municipal enforcement policies and practices.

*Provincial Regulation and Classification of Films.* Eight provinces have enacted legislation to regulate the public exhibition of films. The Committee reviewed the legal mandate, nature, policy and practice of each of these provincial boards, and in relation to three films (Caligula, Pretty Baby and Beau Père) considered the classification practices and the setting of age restrictions with respect to different film depictions of explicit sexual behaviour.

*Municipal By-laws.* In relation to the enactment and operation of municipal by-laws intended to control the sale or viewing of sexually explicit matter, the Committee contacted 18 major cities across Canada requesting information on and copies of any by-law(s) passed in relation to these issues. The legal problems encountered in the enactment of by-laws of this kind were reviewed.

*Importation.* In addition to its legal review of the statutes relating to the unlawful importation of unauthorized goods into Canada, the Committee reviewed the administration and operation of agencies involved in this area of enforcement in relation to the detection and seizure of child pornography (Revenue Canada Customs and Excise Division, R.C.M.P. Customs and Excise Section, and provincial and municipal police forces).

*National Survey of Seizures.* With the assistance of an experienced police officer seconded from Project "P", a Special Task Force jointly operated by the Ontario Provincial Police and the Metropolitan Toronto Police Force, the Committee undertook a survey to obtain information about the importation of immoral or indecent materials, including child pornography, into Canada. In the National Survey of Seizures, visits were made to all Regional Customs Offices and information was also derived from the central files of the R.C.M.P. Customs and Excise Section and the Revenue Canada Customs and Excise Division. The survey assembled findings with respect to 26,357 seizures of all kinds of obscene and pornographic matter, including child pornography, between 1979 and 1981. This source provides a basis upon which to assess the amount of child pornography in relation to other types of pornography detected by enforcement authorities which persons had illegally attempted to bring into the country during the three year period.

*Production of Child Pornography.* An assessment was made of the production of child pornography in Canada which drew upon information provided by: National Police Force Survey; National Population Survey; National Accessibility Survey; Provincial Attorneys-General; R.C.M.P. Customs and Excise Section; Revenue Canada Customs and Excise Division; and major legal decisions pertaining to obscenity.

*Contents of Pornography.* In order to determine the types of sexually explicit depictions contained in pornographic magazines, a content analysis was undertaken for June, 1983 of 11 magazines which are readily accessible in



retail outlets across Canada. The listing of the types of sexual acts depicted in these magazines, which had an audited circulation of over 14 million copies in Canada in 1981, was based on the classification used in the analysis of sexual offences against children adopted in the Committee's other surveys. This classification was also used as the basis for the review of the text, editorials, letters and advertisements contained in the magazines.

*Circulation Statistics.* In the National Accessibility Survey of Retail Outlets, the Committee identified that a total of 540 different "adult" magazine titles were available across Canada between 1982 and 1983. With the co-operation of the Audit Bureau of Circulation, information was obtained concerning the audited circulation of a number of major publications which permitted an analysis of national and provincial *per capita* sales and the sales value of these publications. Circulation trends for magazines audited by the Bureau were documented for the period from 1965 to 1981.

*National Accessibility Survey of Retail Outlets.* With the co-operation of a number of volunteers (persons, committees, colleges and universities), a survey was undertaken concerning the display of pornographic material in 1091 retail outlets across Canada. In this regard, information was obtained about the type of retail outlet selling pornography, the location and number of materials displayed, their height from the floor, whether they were displayed separately or with other magazines and the extent to which covers were exposed to view or were shielded.

*Purchase of Pornography.* In the National Population Survey, information was obtained concerning: the age at which pornography had first been purchased; the types of pornographic matter purchased; views concerning the display of pornography in retail outlets and concerning the setting of age limits in relation to the purchase of pornography; whether persons had experienced unwanted exposure to pornography; and whether they or persons whom they knew had been harmed by pornography.

The findings of the National Population Survey provide the basis to determine the proportion of persons who had first bought pornography when they were children or youths, their usual current buying habits, and the views of a representative sample of Canadians concerning the display of pornography and the setting of age limits with respect to its purchase.

*Associated Harms.* On the basis of findings obtained in the national surveys of the population and police forces, the Committee obtained information on incidents in which children had been exposed to pornography and subsequently had also been sexually assaulted by the same person.

## Briefs and Submissions

Following the announcement of its appointment, the Committee received a number of letters from individuals and briefs from professional associations



and interested groups. The Committee was also contacted at various times by representatives of the news media and the reports subsequently carried regionally and nationally by these sources fostered the submission of an additional number of briefs to the Committee. As a means of directly seeking information from concerned individuals and groups, the Committee published a notice in 23 major daily newspapers across Canada. These newspapers, selected on the basis of those having the largest regional and/or national circulation were estimated to have had an audience of 3.7 million readers. Following the listing of the Committee's Terms of Reference, the notice requested:

"We welcome letters and briefs from children and youths who have been sexually abused, as well as from adults and associations concerned with these problems. We also welcome recommendations on how better protection can be provided."

As a result of the various announcements and accounts carried by the media about its assignment, the Committee held meetings with several dozen individuals and representatives of groups and received a total of 253 written submissions. The concerns and issues raised in these submissions varied considerably depending upon whether they came from individuals, professionals or voluntary groups and associations.

Letters from individuals constituted about half of the submissions (49.4 per cent); these were about evenly distributed among persons who had been victims of child sexual abuse, who had known victims, or who were concerned about these problems. About two in five persons respectively had been victims or had known victims. A third of the former group (33.3 per cent) identified fear, ignorance and stigma as the reasons why victims did not seek assistance or were reluctant to do so. Almost an equal number (29.3 per cent) cited as a problem the disbelief of those who had been turned to for assistance that the incidents had actually happened.

Few victims or persons who had known victims (13.3 per cent) adopted a punitive approach towards child sexual offenders. About one in three (35.7 per cent) called for counselling for victims, family members and offenders. There was little concern among this group about the need to amend legislation or how the helping services might be better organized or co-ordinated. Only a few individuals who wrote to the Committee commented either about juvenile prostitution (4.0 per cent) or pornography (5.3 per cent).

Professional workers and associations submitted about a third (30.9 per cent) of the submissions. The primary emphasis of their briefs (65.9 per cent) revolved about the need to improve the training of professionals with respect to child sexual abuse and the more effective co-ordination of the services of other professional groups involved in providing assistance. Two in five of the professional briefs (38.6 per cent) condemned the law as obstructive to the effective provision of care and harsh in its consequences for the victims of child sexual abuse. About half of these briefs (47.7 per cent) recommended the treatment of victims, their families and offenders as an option that was preferable to the intrusion of the law.

About a fifth of the briefs from professional workers and associations referred to the issues of the access by children to pornography (18.2 per cent) and children involved in the production of pornography (18.2 per cent). About one in nine (11.4 per cent) addressed the issue of juvenile pornography. Their recommendations in this regard included: the need to provide counselling that was trusted; the provision of temporary accommodation for transient youths; and the legal authority to apprehend youths known to be juvenile prostitutes.

About one in five briefs (19.7 per cent) received by the Committee was submitted by voluntary associations and community groups. Seven in 10 (70.6 per cent) of these briefs identified the early access by children to pornography as a problem about which more public education was required and about which government should take prompt action. Six in 10 of these briefs (58.8 per cent) condemned the production and sale of child pornography. The briefs called for a clear and specific definition of obscenity in the law.

While six in 10 briefs from associations (58.8 per cent) referred to child sexual abuse, there was no central theme in relation to the issues dealt with or the recommendations made. About one in six briefs (17.6 per cent) addressed the issue of juvenile prostitution. The recommendations made included the need to provide for greater protection for them and the imposition of stiff penalties on clients.

**The types of concerns raised in the briefs differed sharply depending upon whether they had been submitted by individuals, professionals or voluntary associations. Except for the persons who themselves had been victims of child sexual abuse, it was evident from the briefs that no single group stood clearly apart as a representative spokesman for their concerns. On the basis of its review of the briefs submitted, the Committee concluded that when sensitive issues involving much fear, stigma and ignorance are being considered, seeking comprehensive and representative information by means of public notices or hearings is an inappropriate avenue to follow. Adopting these means serves other valuable purposes with respect to identifying issues, the alerting of concerns and the submission of important recommendations. This approach taken by itself, however, is not a substitute for obtaining information directly from persons who have been sexually assaulted, who report that they have been harmed by exposure to pornography or who have been juvenile prostitutes. Except in rare instances, these are not issues that persons who have experienced these situations are willing to speak openly about, except where there is a trusted assurance that the confidentiality of their accounts will be honoured.**

The letters and briefs received by the Committee raised many significant issues and alerted its Members to problems requiring full consideration and documentation. The major recommendations made identified the need to provide education for Canadian children with respect to protection from unwanted sexual acts, proposed ways that the helping services should be strengthened in the provision of care and called for the amendment of the law of obscenity. The

Committee acknowledges the assistance given by persons and groups submitting these briefs, many of which contained extensive documentation about the issues raised. The evidence and recommendations contained in the briefs received by the Committee were given careful consideration in relation to the issues studied and the framing of recommendations.





## Chapter 2

# Child Sexual Abuse in Canada: An Overview

Persons who have been sexually abused as children and youths have told us of their anguish and sense of helplessness, feelings intensified by their not knowing how they might have sought appropriate help. Resulting from our work, we have been profoundly moved by their betrayed hopes and their suffering. Many of these victims have been scarred for life with uncertainty, fear and despair. They have asked clearly “Can you help?”. Canadians cannot evade this appeal nor think wishfully that this situation will somehow right itself without direct and constructive action being taken. These experiences represent an intolerable situation. It is one which must not be allowed to continue.

Child sexual abuse is a largely hidden yet pervasive tragedy that has damaged the lives of tens of thousands of Canadian children and youths. For most of them, their needs remain unexpressed and unmet. These silent victims — and there are substantial numbers of them — are often those in greatest need of care and help. Only a few young victims of sexual offences seek assistance from the helping services and there are sharp disparities in the types and adequacy of the services provided for them in different parts of the country, and even within communities.

Our Report raises issues which until recently have seldom been discussed candidly and incisively. While child sexual abuse is only one of many problems facing Canadians, it cuts across many facets of the nation’s legal framework and the public and private services. There are no simple or instant solutions. We believe that none can be realized without a strong commitment to develop a comprehensive and co-ordinated national approach involving all levels of government and non-governmental agencies.

## The National Concern

Canadians are deeply concerned about the need to provide better protection for sexually abused and exploited children and youths. This strongly held concern is national in scope. It cuts across all social, religious and political

boundaries. It encompasses all forms of sexual abuse of the child, whether this involves sexual assault, juvenile prostitution or the making of child pornography.

In response to these concerns, we believe that changes can — and must — be made. In submitting our recommendations, which are based on an extensive review of child sexual abuse in Canada, we have sought to lay an integrated foundation upon which rational social and penal policies can be developed and implemented.

## The Role of the Law

The existing laws, both criminal and civil, lack a central purpose and rationale with respect to affording protection for children against sexual offences. Many of these statutes are worded in archaic and imprecise language. They have been separately amended at different times without reference to their impact on related legal provisions and do not correspond to the types of sexual acts actually committed against children.

The Canadian legal system has established in the civil and the criminal law two distinct means of responding to harmful actions committed against children and youths. Either or both of these approaches may be followed in incidents involving child sexual abuse. Under the provisions of provincial child welfare legislation, the state has the authority to intervene, or if the need is shown, to remove a child where it is deemed that he or she is being abused or neglected. In contrast, the criminal law provides the basis for the laying of charges against suspected offenders and for their punishment after conviction.

A crucial weakness inherent in the existing legal framework is that, in practice, there are no clearcut procedures establishing when either or both of these two contrasting forms of state intervention should be used. These important decisions, having critical consequences for the well-being of the child, are largely left to the discretion of attending helping and enforcement workers. As a result, instances occur that constitute grave negligence either because there is insufficient assessment of the child's need or because there is inadequate follow-up to assure that the child is fully protected from the risk of further sexual abuse.

Child sexual abuse differs in several important respects from sexual offences committed against adults. Historically, Canadian criminal law has failed to recognize that child sexual abuse is a complex phenomenon, one that encompasses many different forms of unacceptable sexual behaviours. Many of the terms now used in the law obscure the nature of the conduct being prohibited, making it virtually impossible in some cases to know whether adequate protection is in fact being provided for children.

A central purpose of the criminal law is to prevent persons from harming others and to punish those who do so. Some observers have contended that



since these purposes are not being realized by certain sexual offences, these offences should be repealed. Their argument rests on the contention that certain forms of sexual conduct which they believe are not harmful to others are prohibited by the criminal law. It has been suggested, for instance, in a number of widely cited reports completed abroad, that since few children are seriously harmed by sexual offenders, the provisions relating to these offences serve no useful purpose. These commentators have noted that sexually abused children are more likely to be harmed by the bitter reactions of their parents or the harsh exposure to legal proceedings than by having been victims of sexual abuse. From this perspective, child sexual molesters are typically portrayed as harmless, timid and inadequate persons who need compassion and treatment rather than being held accountable for their actions.

While we concur that many provisions in the criminal law of sexual offences are out-dated, our findings clearly indicate that there is no basis for the alleged "harmlessness" of unwanted sexual acts committed against children or for the belief that most of the offenders are "harmless" individuals. We have found that many young victims were encouraged, seduced and intimidated by sexual offenders. Some of these children sustained physical injuries. Many more experienced enduring emotional and social harms. Our findings clearly show that these children have special needs and vulnerabilities which must be recognized and protected by the criminal law and that existing provisions do not adequately accomplish these purposes.

In order to provide better protection, our proposals are based upon five principles involving the clear specification of: the nature of the sexual acts committed; the age of the child who was the victim of the offence; the child's lack of consent; the type of legal or social relationship between the child and the offender; and the injuries and harms incurred by the young victim. Our proposals are complementary to the sexual assault offences which became law in January, 1983 and are compatible with the criminal law amendments tabled in February, 1984.

We believe that our proposed reforms would provide better protection for children and youths. These reforms would clearly and unmistakably identify those types of sexual conduct committed against young persons which Canadians regard as unacceptable. On the basis of our proposed legal framework, there would be no doubt about the specific nature of the offences for which offenders would be liable to punishment. The changes we propose would directly assist in the enforcement of the law by providing the police and the Crown with specific and objective facts upon which to obtain evidence.

Our proposed reforms derive from the extensive research we have conducted. This has clearly identified a wide range of different types of child sexual abuse and exploitation that cannot be adequately dealt with by the general and vague offences set out in the *Criminal Code*. We believe that the framework we propose would provide a more realistic and rational basis for penal policy with respect to sexual offences against children and youths. At the present time, no such clearly enunciated policy exists.

Just as the sexual offences in the criminal law fail to recognize the many different types of child sexual abuse, there is likewise no rational sentencing policy in regard to sexual offences committed against young persons. The same behaviour may be charged under several different sections of the *Criminal Code*, each carrying a different maximum penalty and having different evidentiary requirements. Our research clearly documents that this situation has resulted in confusion in the laying of charges and the sentencing of offenders. For example, offenders who had committed more serious sexual acts were consistently given proportionately lighter sentences than those who had committed more minor offences.

The assumption is made in some quarters that the sentences imposed by courts are logically and directly related to the types of acts proscribed in the offences. On the basis of this assumption which has not been empirically documented, it has been advocated that a separate section of the *Code* be established in regard to the sentencing of offenders.

Our research findings indicate that these assumptions are invalid in relation to sexual offences committed against children and youths. For many of the existing offences, there is only a partial congruence between the nature of the sexual acts committed and the charges laid or the sentences imposed. Instead of developing a separate section of the *Code* dealing with sentencing, we recommend that the sexual offences against children and youths should be realigned to accord with the specific sexual acts committed and that the sentences imposed be related rationally to this re-structuring of the criminal law.

## The Child's Evidence

In addition to the reform of the criminal law of sexual offences against children and youths, we believe that a fundamental change is needed in the law to permit children to speak directly for themselves at legal proceedings. While recently the truthfulness of victims of sexual offences has been regarded with less scepticism than in the past, the law still regards children's evidence with suspicion.

We believe that there should be no special rules with respect to the child's legal competence to give evidence in court. We recommend that a child's evidence should be received and considered in the same light as that of adults. Our research indicates that the assumptions about the untrustworthiness of young children and their inability to recall events with respect to sexual offences are largely unfounded.

## The Helping Services

While all nations seek to prevent lawless behaviour, it is apparent that any legal system is insufficient by itself to realize these purposes. Other conditions



have to be present if a society's children are to be safe. These necessary conditions include an ingrained respect for the dignity of the person, a system of education that informs children and parents about risks and the means of protection which may be sought and the provision of services of high quality to meet the needs of victims.

There is a bewildering variety of public and private programs across Canada that are available to provide assistance and protection for sexually abused children. These functions are divided between federal, provincial and local levels of government and include a broad assortment of national, community and voluntary associations. Each service or program typically draws upon the skills, specialized knowledge and practical experience of workers trained in different specialties.

What stands out sharply in the work of these different services is the immense lopsidedness of the services provided. Too often, decisions to assist the sexually abused child are made in relative isolation; the policies affecting the care of these children are frequently established by professional workers without a full and open consideration of their propriety or for the short and long-term consequences for the children being served.

There is much 'balkanized' rivalry between these services, some of which have assumed such distinctive identities of their own that they are relatively independent of or impervious to the main concerns of the public. In many instances, agencies have developed services which are believed to meet the needs of sexually abused children, but which in fact fail to do so adequately or effectively. These shortcomings in the provision of services are guarded by strong institutional defences. The arguments most commonly heard here are that the services do not have enough resources and facilities or that other services are insensitive to the needs of children and are incompetent to help them.

Those who hold these views tend to advocate a rigid and narrow specialization in the field of child sexual abuse, namely, that their programs are the only ones appropriate to make critical decisions about the needs of these children and the types of assistance that should be provided for them. They also have correspondingly rigid attitudes to support this perspective.

As a result, critical lines of tension have developed which involve competing strategies regarding the optimal provision of care for the young victims of sexual offences. It is evident in light of our findings that the relative strength with which these ideas are held directly affects both the type and adequacy of what is undertaken on behalf of these children.

Historically, each of the main helping services has developed somewhat different concepts of child protection, different means for assessing and investigating the needs of young victims, different standards in determining how assistance can best be provided and different ways of providing such help. Our research indicates that as a result of these different perspectives, many sexually abused children either received no assessment or that their needs were only



partially and inadequately considered. Many were left in positions of continuing risk with insufficient follow-up to ascertain that their safety was fully assured.

In each of the main public services, there is much latitude in the discretionary decisions that may be made about the management of sexually abused children. These critical decisions include: whether the incident is reported to the police or not reported; whether some acts are considered minor or serious; whether assessment — none, partial or complete — is made of the child's situation and needs; and whether care and assessment are provided exclusively by that agency or whether other services are contacted and consulted.

The making of discretionary decisions is an inherent and essential feature of all forms of professional work. However, in the absence of clearly enunciated and monitored standards, there is the risk and reality that decisions may be made which result in an incomplete assessment of the child's needs.

Our findings leave no doubt that these deficiencies occur. It is evident that, to the extent that each helping service adheres to the principle of preserving its institutional and professional autonomy to the exclusion of seeking external counsel and assistance, it may correspondingly fail to provide these children with needed comprehensive assessment, care and protection.

There is also an enormous difference of opinion in providing these services as to whether the child welfare laws or the criminal law should be invoked. In practice, this dichotomy has resulted in the development of different intervention approaches having sharply different consequences in identifying the needs of sexually assaulted children and in affording them adequate protection. It is evident from our findings that, whichever of the main intervention approaches is adopted, what is often missing is an adequate assessment and investigation undertaken on behalf of the child.

Our findings show that the provisions of provincial child welfare legislation are frequently not operating on the basis intended by legislators. In practice, child protection services are neither turned to extensively by young victims or their families, nor do they receive many referrals of such cases from other helping services.

While encompassing a wide range of situations in which the child warrants protection, provincial child welfare statutes provide no guidance concerning whether these provisions or those of the *Criminal Code* are to be invoked. Even within specific jurisdictions, it is evident that policies which are said to have been established are inconsistently followed. Likewise, the provincial child welfare statutes do not specify what is to be undertaken when the situation and needs of a sexually abused child are being assessed. With respect to these issues, we believe that all provincial child welfare statutes should be reviewed and, where required, amended to provide more clearcut guidance concerning what is to be undertaken in the assessment of sexually abused children and in

specifying the review procedures to be followed to assure that these standards are being met.

## Principles of Practice

To provide care and protection for sexually abused children, we strongly adhere to the principles that:

1. Effective educational programs must be developed that inform children and their parents about the risks of child sexual abuse and ways to obtain assistance.
2. Appropriate, available resources must be more effectively co-ordinated.
3. Rigorous attention must be given to assuring that these services are provided in accordance with established and assessed standards.
4. There should be full, continuous and independently reviewed documentation of what is being done on behalf of the child.

We recognize that there are important unresolved issues concerning the provision of certain aspects of *sexual education and health promotion* for Canadian children. Even so, we believe that there is an urgent need to provide children and youths with practical training in recognizing the danger signals of sexual abuse and exploitation and how to protect themselves from the risks of unwanted sexual conduct. In addition to affording better protection against child sexual abuse by the reform of the child welfare laws and the criminal law, and the strengthening of the helping services, the development of sensitive and effective educational programs made available for all Canadian children and their parents would, we believe, have a powerful effect in directly protecting children and informing them about what they should do when such incidents occur.

With respect to the need for an *effective and integrated co-ordination of the several helping services*, we reject the notion that adequate protection for the child can only be provided by means of a single approach. There are many different means whereby these purposes may be realized; it is apparent in some parts of Canada that a number of programs are evolving which recognize the need to bring helping services having common objectives more closely together.

The experiences of these special programs — still few in number — should become better known. It is an anomaly that the existing programs in Canada have been largely ignored or remain unknown, while the experience of foreign programs which cannot be readily replicated in this country have been widely acclaimed. We believe that the special programs that have been established in Canada should be fully documented and that their efforts to provide comprehensive assessment, care and protection for young victims of sexual abuse should be considerably strengthened. These programs are providing a leadership which could serve to foster a broader network of services providing a high quality of assistance for sexually abused children across Canada.



A third principle which we believe must be firmly established in practice and in legislation is the *formulation and application of standards* to ensure that the needs of sexually abused children are being adequately met. Not only do our findings show that there is an unequal provision of needed services for these children, but that we are also making poor use of available resources with the result that the adequacy of the services rendered fluctuates widely. In the absence of standards, or of sufficient steps taken to ensure that existing standards are being applied, our findings indicate that there have been regrettable errors of judgment resulting in children being insufficiently assessed concerning the harms they may have sustained and inadequate investigations concerning their continuing risk of further abuse.

Instead of these critical decisions being reached informally, there is a clear need to establish explicit standards for the assessment of sexually abused children. In some quarters, this view may be challenged on the grounds that such standards are unnecessary, that they have already been established, or that their introduction would constitute an infringement of professional judgment and autonomy. With the exception of certain programs, we found little evidence that standards existed which were being consistently or rigorously followed, and where they have been established, of their being reviewed to ensure that they were being observed. Those who may choose to dispense with agreed and applied standards have the responsibility to propose other workable alternatives. We believe there are none that are not subject to the real possibility of serious errors of judgment.

In our view, the setting of standards, which are widely recognized and applied, performs an essential, if not always a welcome job. Such standards should be grounded in the judgment of experienced persons having different perspectives of these problems. Their application should be independently reviewed and documented, and they should be periodically revised and strengthened. In light of our findings, there can be no doubt about the need to improve the quality of the assessment and care that are being afforded these children.

Our fourth principle, the *need for adequate information* concerning the operation of existing programs, constitutes a requisite foundation if more effective services are to be developed. Existing official information systems are virtually worthless in serving to identify the reported occurrence and circumstances of child sexual abuse.

Without exception, all of these systems are so seriously flawed that they fail to provide even rudimentary information about the victims of sexual offences, whether they are children, youths or adults. Although this information is available in the front-line reports of investigations, there are no provincial or national statistics of how many sexual offences against children have been investigated by the police. Accurate statistics in this regard are virtually non-existent among child protection services. The system of medical classification of injuries fails to identify the major types of sexual assaults committed against victims. The available statistics on sentencing prevent judges from



being able to assess the efficacy of their decisions imposed upon convicted child sexual offenders. Official reporting systems also contain significant omissions about those offenders who are deemed to be among the most dangerous criminals in the country, many of whom have been convicted of sexual offences against children.

In light of these deficiencies, it is hardly surprising that at the present time we have a very imperfect understanding of the officially known occurrence of sexual offences against children. It is significant that none of the existing systems provides for an accurate listing of information in accord with the sexual offences in the *Criminal Code*, let alone information about who the victims of these offences are. The absence of comprehensive and accurate information, which it would be readily feasible to obtain, effectively precludes the documentation of the nature and adequacy of the protection afforded by existing sexual offences or of the benefits that may be gained by amendments to these provisions in the *Criminal Code*.

The state of research on these issues is at about the same level as that of official information systems. While over the years considerable public resources have been assigned to support research, many of the studies in the fields reviewed by the Committee have been severely limited in their design and scope. Most of the available research reports have failed to take into account the circumstances of victims, the basic elements of the offences committed or the wide range of relevant legal issues.

In relation to both official information systems and research, it appears that in the past there has been little in the way of informed direction given by the various levels of government in order to ascertain the extent of sexual offences committed against Canadians of all ages. Insofar as government fails to identify these problems by fact, and not by inference, it must assume a major part of the responsibility for not providing leadership in affording better protection for the victims of sexual offences. It is intolerable that knowledge about the provision of the main helping services provided for sexually abused victims of all ages should be blind-folded by the absence of essential and obtainable information. These are instruments which are clearly within the authority of government to amend, in order to make them an efficient means of affording better protection.

## Needed Legislative Action

Our review indicates that what is now lacking is any widely agreed upon policy providing for an orderly, comprehensive and rational development and provision of services for the assistance and care of sexually abused children. We believe that the needs of the sexually abused child are too varied and complex to be adequately served by a single helping service. To understand their needs and the harms that they may have sustained requires the complementary provision of a broad range of services. In saying this, however, we believe that

the direct care of the child should be provided by as few persons as possible. Such a step is not incompatible with drawing upon a full range of professional experience and depth of judgment which should be marshalled to assist those persons who work directly with the child.

The obstacles that now hinder the achievement of better protection for sexually abused children are not insurmountable. While in the short run they represent serious barriers to realizing this aim, we have no doubt that many of these problems can be resolved by an energetic and joint endeavour involving all levels of government working in full co-operation with non-governmental organizations.

**Parliament and the legislatures of the nation are essential anvils in shaping compelling priorities and in providing leadership concerning the direction to be taken in achieving them. In relation to the problem of child sexual abuse, we believe it is the proper responsibility of government to establish clear social and penal policies whereby better protection can be provided and which through time may serve to reduce the occurrence of these offences. It is clear that these policies cannot be developed in isolation by any one level of government. Their success will require leadership, co-ordination and a firm political commitment to assign sufficient resources.**

**Our work has shown us the complex dimensions of this deeply rooted tragedy. We know that they are — and will be — difficult to resolve. We know that adequate assistance and protection have not yet been achieved. And we know that we must do better and that as a nation we have the means to do so.**

**The answer to the appeal “Can you help?” must be to seek to serve in exemplary fashion the special needs and vulnerabilities of sexually abused children. We believe that it is only by joint and continued endeavour that Canadians will be able to ensure the dignity and worth of our children who are victims of sexual offences and to fulfill our unshakable purpose of preserving that dignity.**

## Chapter 3

# Recommendations

During a period of over a century following Confederation in 1867, there was no major revision of the complete legal framework of the Canadian criminal law of sexual offences. Since the beginning of the 1980s, however, several significant legislative amendments and proposals have been brought forward in response to a growing public concern about the need to provide better protection against these crimes.

It was in the context of these important legal reforms that the Committee was appointed to deal directly with how a comprehensive and rational legal and social framework could be provided in order to afford needed assistance and protection for the young victims of child sexual abuse. In light of its extensive findings, the Committee strongly believes that advantage should be taken of the momentum of recent legislative reforms to extend all necessary protection to Canadian children and youths against sexual offences.

The Committee's mandate was to determine the adequacy of the laws and other means used by the community in providing protection for children against sexual offences and to make recommendations for improving their protection. On the basis of our findings about some 10,000 cases of sexual offences against children and youths, our principal conclusions are that these crimes occur extensively and that the protection now afforded these young victims by the law and the public services is inadequate. The law is inequitable in its application. Sharp inequalities exist, often occurring in the same community, in the provision of assistance and protection for the victims of these offences.

In undertaking its assignment, the Committee's main concern was with how the well-being and interests of the child could best be served with respect to affording protection from sexual offences. Because of the child's vulnerability and special need for protection and security, we believe that assuring these purposes must be a paramount objective of the civil and criminal law, different levels of government, and the helping professions and non-governmental agencies. The changes that are required to achieve these purposes will entail a fundamental shift in the values of Canadian society, the diminution of pride of separate jurisdictional authority and institutional prerogatives, and a firm spirit of co-operation between different levels of government and between the different helping professions.



The Committee is aware that the required changes will not be easily or readily realized. But there can be no doubt on the basis of our findings that vital ameliorative changes must be made and that assuring these purposes must be the unswerving objective of those concerned with the reform of the law and of upholding the traditional ethics of the helping professions.

In reaching our conclusions, we have done so on the basis of a review of the Canadian law on sexual offences which has been coupled with an empirical assessment of the present situation of the sexually abused child. It is in light of this assessment that each of our major recommendations rests upon a substantial body of evidence. With respect to the substance of our main findings, the Committee believes that their significance is generally clear and unequivocal. We know of no other source for Canada that provides comparable comprehensive information assessed at a national level.

Presented under nine major categories, our recommendations specify the social and legal reforms we believe are required in order to provide better assistance for sexually abused children and to afford young persons better protection from becoming victims of sexual offences and exploitation.

1. **Office of the Commissioner** (Recommendation 1);
2. **Education for Protection** (Recommendation 2);
3. **Reform of the Sexual Offences** (Recommendations 3-17);
4. **Principles of Evidence** (Recommendations 18-27);
5. **Strengthening the Provision of Services** (Recommendations 28-34);
6. **Information Systems** (Recommendations 35-38);
7. **Research** (Recommendations 39-40);
8. **Juvenile Prostitution** (Recommendations 41-48);
9. **Pornography** (Recommendations 49-52).

We believe that the actions we propose are essential and that they are feasible to implement. Several of the changes we call for require the reform of the law and a restructuring of services. By themselves, such changes, if acted upon, will not assure complete protection for all sexually abused children. Their implementation, however, will serve to lessen or remove many of the serious deficiencies that now exist.

**In submitting our recommendations, we do so unanimously.**

# Office of the Commissioner

By focussing on sexual offences against children, the Committee has been able to obtain extensive and detailed information on the relevant legal issues as well as on the wider issues that concern the helping services. The Committee believes that because of its usefulness in putting a wide variety of behaviours under examination, this focus should be retained in the federal government's response to the Committee's findings and recommendations which should be reflected by the involvement of all interested departments and non-governmental organizations.

The Committee acknowledges the indispensable contribution of community and voluntary agencies in affording assistance and protection for sexually abused children. There can be no doubt that in the development and implementation of measures required to afford better protection for these children, the full participation of these services at the local and national levels is required at each stage of the work to be done in carrying out the initiatives for reform which the Committee recommends.

Although the federal government is responsible for the *Criminal Code*, the provincial Attorneys-General are responsible for enforcing its provisions. The federal government provides financial assistance to the provinces for the operation of social and health services and the provincial governments have extensive jurisdictional authority over these services which provide protection for children and youths. Without full co-operation and assistance from provincial and municipal as well as federal government departments, much of the information collected in this Report would not have been obtained. Because of their deep concern with these issues and their jurisdictional responsibilities, it is essential that provincial governments take an active part in responding to the Committee's findings and recommendations.

The problem of child sexual abuse in Canada is so pervasive and deep-rooted that in its response to our recommendations, we believe that the Government of Canada must establish a means to deal adequately and on a co-ordinated basis with these issues. We believe that the problems identified and documented in the Report are too far-reaching and complex to be dealt with exclusively or effectively by one or two federal departments or by one level of government alone. What is required to achieve what must be done is an administrative mechanism which retains the perspective of all dimensions of the problem and which can actively initiate and co-ordinate the reforms that are required. In our judgment, it is unlikely that this work can be achieved within the existing organization of public services.

In the course of its review, the Committee found numerous instances in relation to the occurrence of sexual offences where important recommendations made by distinguished advisory commissions had never been implemented. Over a period of several decades, federally appointed commissions have



advocated major reforms in the assembling of criminal statistics and that comprehensive national research be mounted in relation to sexual recidivism and the management and treatment of convicted sexual offenders. Such proposals were cogently presented in the 1938 *Report of the Royal Commission to Investigate the Penal System of Canada* (Archambault Report).<sup>1</sup> They were subsequently reiterated in: the 1956 *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice* (Fauteux Report);<sup>2</sup> the 1958 *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths* (McRuer Report);<sup>3</sup> and the 1969 *Report of the Canadian Committee on Corrections* (Ouimet Report).<sup>4</sup>

None of the recommendations of these advisory bodies pertaining to reform of criminal statistics involving the listing of sexual offences or the undertaking of comprehensive long-term research on sexual recidivism, the treatment of sexual offenders and the efficacy of different sentencing practices was subsequently acted upon. Consequently, there is now no information available at the national level concerning the ages and sexes of victims of sexual offences. Likewise, it is unknown how many reported cases there are of girls and women who have been sexually assaulted or who have been the victims of buggery or incest. While the 1938 Report of the *Archambault Commission* and those of later inquiries called for research on sexual recidivism, prior to the appointment of this Committee, no such studies had been published providing information assembled from federal and provincial correctional services.

In submitting their recommendations, it appears that previous federal inquiries assumed that the existing structure of government services had the requisite capacity to respond effectively to the initiatives being proposed. For whatever reasons, it is evident that this has not been the case. In relation to numerous significant issues pertaining to sexual offences, many of the recommendations of these earlier inquiries have consistently been shelved, forgotten or ignored. Without venturing to act upon specific recommendations, it has on occasion been concluded that it is not feasible to do so. The Committee's research on sexual offences against children and sexual recidivism, amongst other issues studied, does not support this assumption.

The work of government is compartmentalized into departments, each having its own priorities, its limited scope of authority and its resources assigned to fulfill specific activities. As noted in the 1969 *Ouimet Report*, the organization of government services functions to constrain severely the capacity of particular departments operating at one level of government in dealing effectively with complex social problems whose potential resolution requires close and continuous co-operation within and between different levels of government and with non-governmental agencies. In this regard, there may be a mismatching between the duties which particular departments may be properly expected to fulfill and their actual capacity to be able to respond effectively to problems for which they have partial authority to deal with and limited resources to do adequately what is required. The 1969 *Ouimet Report*



concluded that, in some instances, action on the recommendations of advisory bodies may not be taken, since to have done so, would have provided information critical of the operation of existing services.

In the Committee's view, the pride of jurisdiction should not take precedence over the need to implement reforms which, were they acted upon, might afford better protection against sexual offences for Canadian children and youths. Accordingly, we believe that the Government of Canada should establish an Office of the Commissioner, reporting directly to the Office of the Prime Minister, having the assigned authority to review the recommendations of this Report, and serving as the means of initiating and co-ordinating the reforms which are called for. Assigned its own budgetary allocation for these purposes, the Office of the Commissioner would function to initiate and co-ordinate the work of various federal departments, work in conjunction with related departments at the provincial level, and establish the means requisite to assure the full participation of non-governmental agencies in these activities.

Where special needs have been recognized in the past, the Government of Canada has established special bodies which are assigned responsibility to respond to these issues. On the basis of our findings, there can be no doubt that the establishment of an Office of the Commissioner is warranted in order to initiate and marshall the efforts of all levels of government and non-governmental agencies, having as their common purpose, the provision of services required to reduce and prevent child sexual abuse.

#### **Recommendation 1**

**The Committee recommends that, in order to provide an effective network of services for the assistance and protection of sexually abused children and youths, the Government of Canada establish an Office of the Commissioner reporting directly to the Office of the Prime Minister having assigned responsibility:**

- 1. To implement the Committee's proposals for social and legal reform.**
- 2. To establish, in conjunction with non-government agencies and the provinces, the most useful mechanism for co-ordinating and integrating public and private efforts for providing these services.**

## **Education for Protection**

Sexual offences are committed so frequently and against so many young Canadian children that there is an evident and urgent need to afford victims better protection. The Committee's findings show the compelling nature of the fears and stigma associated with having been a victim of sexual assault. Many young children do not know where to turn for help, particularly when the offence is committed by a family member or someone whom they know.

In accounts received by the Committee from persons who had been sexually abused as children, an eloquent appeal was made that children in the

future should know better how to protect themselves from these risks. In order for a child to seek help or give evidence, pre-requisites are the recognition that an act was wrong and the strength to overcome the fears and shame involved in telling others about these acts. The Committee believes that as part of a broader program of education, children and youths should be better informed about the risks, and that this educational program should also be undertaken as a preventive measure intended to educate and dissuade potential sexual offenders from committing these acts.

In the recommendations that follow, the Committee calls for changes in legislation intended to provide an essential legal framework to afford better protection for children and youths. Taken by themselves, these measures, however, would be insufficient to contain this widespread problem.

### **Recommendation 2**

**The Committee recommends that one of the principal responsibilities of the program that is established in conjunction with the Office of the Commissioner co-ordinating federal, provincial and non-governmental agencies' initiatives be concerned with the development and implementation of a continuing national program of public education and health promotion focussing specifically on the needs of young children and youths in relation to the prevention of sexual offences and affording better protection for children, youths and adults who are victims.**

In developing a national program of public education and health promotion focussing on the needs of sexually abused children and youths and the means whereby they may be better protected, the Committee believes that the Office of the Commissioner, in conjunction with federal and provincial ministries and non-governmental agencies, should actively seek the co-operation of the media, the National Film Board of Canada, and provincial educational radio and television services, amongst others, in order to develop programs pertaining to these issues which can be widely disseminated across the country. Few such resources are now available that are geared to serve these purposes.

## **Reform of the Sexual Offences**

Early in the Committee's work, it became apparent that a reformulation of the sexual offences in the *Criminal Code* was required in order to provide young persons with more effective protection against sexual abuse and exploitation. Although the Committee's proposed reformulation has drawn upon aspects of the former and existing law, it constitutes a major departure from the traditional classification of sexual offences as they relate to children and youths. That young persons are particularly vulnerable to sexual abuse and exploitation makes the adoption of a special legal framework in this context both necessary and desirable. As one commentator has observed:



The development of human sexuality is a gradual process. Its full realization presupposes the achievement of an equilibrium between body and spirit, between physical growth and mental and emotional maturation. Our society believes, and justly so, that the law must protect those who have not yet attained full sexual autonomy or who have not yet achieved this equilibrium. Children must therefore be protected from sexual exploitation and corruption until they have arrived at a degree of maturity which will enable them to foresee the consequences of their acts and take important personal decisions with full and clear appreciation of the facts, or at least until they come to the age at which that degree of maturity should be presumed.<sup>5</sup>

The various sexual offences in the *Criminal Code* and their deficiencies from the standpoint of child protection are extensively reviewed in the Report. The Committee's recommendations for the reform of this area of the law, summarized in Table 3.1, seek to redress these deficiencies and provide a legal framework which, in the Committee's judgment, is clearly and rationally related to the protective ends that the criminal law should serve. In proposing reforms to the criminal law of sexual offences against young persons, two basic questions present themselves: What conduct should be made criminal?; and What sentences should be available against persons who commit these crimes?<sup>6</sup> The characteristics of sexual acts involving young persons which make such acts unacceptable, and thus properly the function of the criminal law to denounce and punish when the offender is of the age of criminal responsibility, fall into five broad (and often overlapping) categories:<sup>7</sup>

- *The nature of the sexual act engaged in*, for example, buggery with a 14 year-old;
- *The age of the child with whom the sexual act is engaged in*, for example, sexual touching of an eight-year old's genitals;
- *The young person's lack of consent to the sexual act*, for example, the sexual assault of a 17 year- old girl;
- *The legal or social relationship between the offender and the young person*, for example, acts of oral sex involving a teacher and an 11 year-old pupil; and
- *The harms which may be incurred by the child as a result of the sexual conduct*, for example, physical and emotional injuries, pregnancy and the risk of contracting a sexually transmitted disease.

The Committee's proposed reformulation is grounded on an assessment of these five considerations, in relation both to the types of sexual conduct involving young persons that should be proscribed, and the maximum sentence that should be available depending on the offence committed. The Committee believes that the appropriateness of providing legal defences for an accused must be viewed in relation to the seriousness of his or her conduct. Where an accused's conduct (for example, sexual intercourse by a 16 year-old male with a 14 year-old girl) may result in substantial physical and emotional harms to his sexual partner, it is not appropriate to exempt him completely from the prohibition against this conduct, either because of his age or because of his mistaken perception of his partner's age. These facts should be taken into account in sentencing.



**Table 3.1**

**Committee's Recommendations Concerning the Major Sexual Offences**

Committee's Recommendations	Current Criminal Code Provision
1. Repeal one year limitation on prosecutions (section 141 and section 168(2)).	Section 141 affects sections 151 (seduction of female 16 or 17), 152 (seduction under promise of marriage), 153(1)(b) (sexual intercourse with female employee under 21), 166 (parent or guardian procuring defilement), 167 (owner or manager of premises permitting defilement of female under 18), 168 (corrupting children). Section 168(2) affects only section 168.
2. Reduce maximum sentence 146(1) offence to less than 14 years.	Sexual intercourse with a female under 14. Maximum sentence life imprisonment.
3. Repeal sections 146(2)(b) and 146(3).	146(2) sexual intercourse with female 14 and under 16.  146(2)(b) female must be of previously chaste character.  146(3) court may find accused not guilty if he is not more to blame.
4. Amend section 140 to provide consent by person under 16 not a defence.	Consent by person under 14 not a defence to a charge under section 146 (sexual intercourse with female under 14, and with female 14 and under 16).
5. Repeal section 147.	No male person under 14 deemed to commit section 146 (sexual intercourse with female under 14, and with female 14 and under 16) or section 150 (incest) offence.
6. Amend section 150 to provide section does not apply to victim.	Section 150(3) provides court not required to impose punishment on female victim convicted of incest.
7. Repeal section 151.	Seduction of female 16 or 17. Maximum sentence 2 years' imprisonment.
8. Repeal section 152.	Seduction under promise of marriage. Maximum sentence 2 years' imprisonment.
9. Repeal section 153(1)(a) and replace with abuse of position of trust offence.	Sexual intercourse with step-daughter, foster daughter, or female ward.
10. Repeal section 153(1)(b) and replace with abuse of position of trust offence.	Sexual intercourse with female employee under 21.

**Table 3.1 (continued)**

**Committee's Recommendations Concerning the Major Sexual Offences**

Committee's Recommendations	Current Criminal Code Provision
11. Repeal section 154.	Seduction of female passenger on board a vessel.
12. Amend buggery offence (section 155) to apply only where female complainant under 18 not wife of accused, and where male complainant under 18. Maximum sentence imprisonment for less than 14 years if complainant under 14, 5 years if complainant 14 and under 18.	Buggery applicable to all ages except for consensual acts in private between husband and wife or any two persons aged 21 or over. Maximum sentence imprisonment for 14 years.
13. Make bestiality (section 155) a summary conviction offence. Create new offence of compelling another person to engage in bestiality, and engaging in bestiality in presence of or with another person under 18. Maximum sentence imprisonment for less than 14 years.	Maximum sentence 14 years.
14. Repeal section 157.	Gross indecency. Maximum sentence 5 years' imprisonment.
15. Repeal section 158.	Exception to sections 155 (buggery) and 157 (gross indecency) re consensual acts in private between husband and wife or any two persons aged 21 or over.
16. Repeal section 175(1)(e) and create separate offence of person convicted of any sexual offence found loitering near school ground, etc. Summary conviction offence.	Vagrancy (convicted sexual offender loitering near school ground, etc.). Summary conviction offence.
17. Repeal less than 3 years older exception in section 246.1(2).	Consent by complainant under 14 not a defence to sexual assault offences unless accused less than 3 years older than complainant.
18. Repeal Section 253.	Communicating venereal disease.
19. Create new offence of abuse of position of trust by sexual touching of person under 18. Maximum sentence 10 years' imprisonment.	

**Table 3.1 (concluded)**

**Committee's Recommendations Concerning the Major Sexual Offences**

Committee's Recommendations	Current Criminal Code Provision
20. Create new offence of touching persons under 16 in the genital or anal region for a sexual purpose. Maximum sentence imprisonment for less than 14 years if complainant under 14, 10 years if complainant 14 and under 16.	
21. Create new offence of inviting, for a sexual purpose, the touching of another by a person under 14. Maximum sentence 5 years' imprisonment.	
22. Create new offence of exposing genitals to person under 16 for a sexual purpose. Summary conviction offence.	

Vague offences have had the undesirable result that the same behaviour can be charged under three or four different sections of the *Criminal Code*, each with a different maximum sentence and different evidentiary requirements. This situation has resulted in confusion and unnecessary complexity in an area of the law which, to the greatest extent possible, should be clear and straightforward.

The 1983 Report on *Sentencing Practices and Trends in Canada* commissioned by the federal Department of Justice makes the assumption that the sentences imposed are logically related to the behaviours subsumed in the offences.<sup>8</sup> The Committee's findings, documented in the National Police Force Survey and the National Corrections Survey, clearly indicate that, in relation to sexual offences against children and youths resulting in charges being laid and sentences imposed, this assumption is invalid.

The Committee believes that the answer is not to develop a separate sentencing section of the *Criminal Code*. The evidence given in this Report leaves no doubt that the existing provisions in the *Criminal Code* must be restructured based on a rationale that accounts for the specific sexual acts committed and that connects the offences and sentences in a rational manner. The existing system of penalties is both irrational in its structure and in its application.

In the Committee's judgment, treating children differently from adults and, more specifically, treating some sexual acts with children differently from other, dissimilar sexual acts, would have a number of real advantages for child protection. First, it would better educate the public about the seriousness with



which the law regards inappropriate sexual behaviour with children by identifying more explicitly those behaviours that are completely unacceptable and, if perpetrated, will render the offender liable to severe punishment. It would thus sharpen the deterrent edge of the criminal law. Second, such an approach would assist the police and the Crown in their charging practices, by giving them objective facts to look for and to garner evidence on, for example, the age of the child and the sexual act engaged in, rather than requiring them (as at present) to make subjective value judgments, such as whether the act was "grossly indecent". Third, it would provide a more coherent and streamlined criminal law, a criminal law based on sound policy and reflecting an appreciation of the wide range of qualitatively different behaviours which are subsumed within the vague label, "child sexual abuse and exploitation".

The Committee's proposed reforms are complementary to the sexual assault offences which became law in January, 1983. These new offences deal primarily with incidents in which one of the parties did not consent to the sexual touching, or in which the offender used threats or violence in perpetrating a sexual assault. They do not, however, adequately address the wide range of sexual behaviours involving young persons which should be proscribed for reasons independent of the victim's lack of consent or the offender's use of threats or violence. The absence of the victim's consent is only one of several policy bases for prohibiting certain forms of sexual conduct involving a young person. The offences proposed by the Committee proscribe behaviours with children and youths which are unacceptable for reasons largely independent of the issues of "consent" and "assault", namely, the age of the young person; the nature of the sexual act engaged in; the abuse of a position of legal or social trust by the offender; and the harms which may be incurred by the young person as a consequence of the sexual act.

## Sexual Intercourse with Girls Under the Age of 16

Under current Canadian law, there is an absolute prohibition against a male person having sexual intercourse with a female person who is not his wife and who is under the age of 14 years. It is no defence that the accused believes that she is 14 or older and an accused found guilty of this offence is liable to imprisonment for life.<sup>9</sup> Consensual sexual intercourse involving girls 14 or 15 is, however, subject only to a qualified form of prohibition: the prohibition applies only where the female is "of previously chaste character", and the court may find the accused not guilty if the evidence does not show that the accused was more to blame than the female for the sexual behaviour.<sup>10</sup> Obviously, the qualification largely defeats the purpose of this offence.<sup>11</sup>

The substantial risks of contracting a sexually transmitted disease incurred by girls who engage in sexual intercourse with their partners, and the associated medical complications, are extensively reviewed in the Report. The findings indicate that young girls who become pregnant are recognized to be in

a high risk category and require specialized care and medical attention. These girls are subject to greater medical hazards throughout their pregnancy than are pregnant women, and are more likely to deliver prematurely and to have babies who are themselves in a high risk category. Moreover, therapeutic abortions performed on young girls carry a higher than normal risk of complication at all stages of gestation.

In light of these considerations, the Committee strongly considers that the absolute prohibition against a male person having sexual intercourse with a female person who is not his wife and who is under the age 14 years (currently contained in section 146(1) of the *Criminal Code*) should be retained. The Committee also concludes on the basis of its findings and pending more complete information on the attendant health risks of sexual intercourse for young females that the prohibition in section 146(2) against sexual intercourse with female persons who are 14 or 15 years of age should also be retained. The provisions in section 146(2)(b) (complainant must be of previously chaste character) and section 146(3) (court may find accused not guilty if he is not more to blame) are, in the Committee's judgment, inappropriate to the offence and should be repealed. Section 140 should be amended accordingly by substituting the age of 16 years for the age of 14 years.

The Committee agrees with the following statement of the English *Policy Advisory Committee on Sexual Offences*:

We do not think that any advantage would be gained if the law disabled itself from dealing with all young men below a certain age or near in age to the girl involved . . . .[W]hether young men should be prosecuted for the offence and, if convicted, how they should be disposed of, are more appropriately regarded as matters for the exercise of discretion, of the police on the one hand and of the trial judge on the other.<sup>12</sup>

The Committee's findings obtained in the National Police Force Survey and its review of sentencing practices strongly suggest that, in general, this police, prosecutorial and judicial discretion is being appropriately exercised in Canada.

The Committee is strongly of the opinion that the principal means of providing protection is through the provision of information necessary to make young persons and their parents thoroughly familiar with the higher risk involved in the pregnancy of young girls and with the possible consequences of sexually transmitted disease. Without the effective delivery of this information, full use will not be made of the deterrent value of section 146. On the other hand, in the judgment of the Committee, removing the criminal law prohibition against sexual intercourse with young girls from a substantial proportion of their partners who are close in age (which is proposed in Bill C-53 and in the "Working Paper") would do nothing to protect these girls from the medical risks of pregnancy and sexually transmitted disease, and may even have the unintended result of encouraging their exploitation. It is for these reasons that we believe that special statutory protection is warranted in the case of young girls. There will seemingly always be men, young and old, who do not accept



that it is a wrong to have sexual intercourse with young girls. For these men, detection and prosecution may act as a deterrent.<sup>13</sup>

With respect to the maximum sentence for these offences, the Committee considers that a maximum sentence of less than 14 years' imprisonment is an adequate sanction in relation to the section 146(1) offence, and that the current maximum of five years' imprisonment in relation to the section 146(2) offence should be retained. These sentencing maxima would give the sentencing judge the option of imposing a discharge pursuant to section 662.1 of the *Criminal Code*, where the judge "considers it to be in the best interests of the accused and not contrary to the public interest" in all the circumstances of the case.

### **Recommendation 3**

#### **The Committee recommends that:**

- 1. Section 146(1) of the *Criminal Code* be retained, and that the maximum punishment for this offence be changed to a sentence of less than 14 years' imprisonment.**
- 2. Section 146(2) be retained, but that sections 146(2)(b) and 146(3) of the *Criminal Code* be repealed.**
- 3. Section 140 of the *Criminal Code* be amended to specify the age of 16 years instead of the present age of 14 years.**
- 4. Section 147 of the *Criminal Code*, which states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years, should be repealed. This provision is a legal anachronism and no longer serves any useful purpose. The relevant age should be the general age of criminal responsibility, which is set at 12 in the *Young Offenders Act*.**

## **Incest**

The Committee's extensive survey findings on incest and its study of the genetic risks to the off-spring of incestuous unions are presented in the Report. These findings do not support the contention<sup>14</sup> that the offence of incest should be removed from the *Criminal Code*. That there are considerable genetic risks to the off-spring of incestuous unions is a contributing, though not the principal, reason for retaining this offence.

The Committee's research findings on incest in Canada, particularly in relation to father-daughter incestuous unions, strongly bear out the conclusions of English researchers in this context:

We are satisfied from the evidence that we have examined . . . that incest can have ill-effects of a psychological and social kind on the immediate parties and on other members of the family. This is particularly so in the case of incest between father and dependent daughter, which most people would consider to be an abuse of parental relationship. In particular, children may as a



result of incestuous relationships find their capacity to form normal emotional and social relationships impaired. We do not believe that evidence of such ill-effects is inconsistent with the view that incest tends to occur where the familial relationships are already unsatisfactory, or is vitiated by evidence that some children suffer no apparent harm from an incestuous relationship. If it is granted that incest may result in this kind of harm, the problem is to know how best to prevent or minimize it.<sup>15</sup>

The Committee acknowledges that difficulties may be encountered by the affected family where the father is prosecuted for incest. It should be emphasized, however, that criminal prosecutions for incest constitute only a small proportion of all legal proceedings relating to incest, most of which take place in the context of civil, child welfare proceedings. The criminal law typically is used only as a last resort, and as a decisive means of ending the incestuous relationship and of protecting other family members who may be at risk. The incest offence in the *Criminal Code* plays an important part in the efforts by social agencies to secure the safety and well-being of young incest victims; the repeal of this offence would make their work more difficult. Closer co-operation between the police, the Crown and child welfare authorities will help to ensure that prosecuting a father for incest is genuinely in the best interests of the victimized child and her family. In the Committee's judgment, the question is not whether such an option should be available, but rather, in what circumstances this option should be pursued. This latter question is best left to the informed and collective judgment of child welfare authorities, the police and the Crown, taking into account all the circumstances of the particular case.

With respect to sexual intercourse between adults who are within the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*, the almost barren judicial record in Canada in this respect indicates that police forces and Crown attorneys are aware of the inappropriateness of bringing prosecutions in all cases of incest between genuinely consenting adults. It should be noted, however, that justified prosecutions for incest involving adult parties have occurred in Canada, and this fact buttresses the argument for retaining the incest offence in its current form. In one prosecution for incest, the complainant was the accused's 33 year-old daughter; the evidence clearly disclosed that the accused father had selfishly used his parental ascendancy over his daughter in order to gratify his sexual urges. The incestuous relationship was ended as a result of police intervention, at the anxious request of the daughter.

The Committee is not prepared to declare, as the *Law Reform Commission of Canada* has suggested,<sup>16</sup> that, "on principle", incest between "consenting" adults "ought no longer to fall within the purview of criminal justice".<sup>17</sup> On the contrary, the Committee's extensive research findings on father-daughter, brother-sister and grandfather-granddaughter incest compel the opposite conclusion. With respect to the elements of the incest offence, the Committee considers that the offence should be restricted, as at present, to acts of sexual intercourse between persons within the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*. The Committee is also of the

view that the term “incest” should be retained, since by it the nature of the prohibited conduct is generally understood by the community, which is concerned to take effective measures to stop it.<sup>18</sup>

#### **Recommendation 4**

**The Committee recommends that:**

1. The offence of incest in section 150 of the *Criminal Code* should be retained, with section 150(3) to be amended to provide that section 150 does not apply to any person who has sexual intercourse under restraint, duress or fear of the person with whom he or she has the sexual intercourse.
2. Section 147, which states that no male person shall be deemed to commit an offence under section 150 while he is under the age of 14 years, should be repealed. The relevant age should be the general age of criminal responsibility.

### **Age of Sexual Autonomy**

Under current Canadian law, two persons must be 21 or older to be assured that, apart from incest, none of their private consensual sexual conduct constitutes a criminal offence. Buggery (sexual intercourse *per anum* by a male person with a male or a female person) is currently prohibited by section 155 of the *Criminal Code*, and gross indecency (a wide range of homosexual and heterosexual behaviours) with another person is prohibited by section 157. Section 158 provides that the above offences do not apply to any consensual act committed in private between a husband and his wife, or any two persons, each of whom is 21 or older. In light of developments since 1969 when the exception from criminal liability in section 158 was introduced, the Committee considers that 18 would be a more appropriate age of autonomy for these types of conduct. The Committee’s conclusion is supported by two important considerations:

1. The age of 18 is the age of legal majority in most Canadian provinces. The Committee considers this an important factor in determining at what age the criminal law should cease to regulate private, consensual sexual acts between persons. In the view of the Committee, a person who is deemed to be an adult for many important social and legal purposes should be able to engage in private consensual sex with another adult, without fear of incurring a criminal sanction.
2. The Committee’s findings from the National Police Force Survey indicate that, if the age of “full consent” to heterosexual or homosexual behaviour were lowered from 21 to 18, this would not affect police charging practices to any appreciable extent. The Committee found that, where parties to a private, consensual homosexual or heterosexual encounter were 18 or older but not yet 21, the police were very seldom called upon to intervene.

There is considerable medical opinion that sexual orientation is settled by age 16. There is also opinion to the contrary. The Committee is concerned that

legal protection be retained where it may be useful to young persons. The Committee would therefore not reduce the age of sexual autonomy to 16 in the absence of persuasive evidence that such a reduction would pose no risk to developing sexual behaviour.

Should the new act-specific offences against children recommended by the Committee be implemented, it would not be necessary to retain the offence of gross indecency for persons under 18. Nor would it be necessary in the case of persons 18 or older, since the offence of indecent act in section 169 of the *Criminal Code* would apply to indecent behaviours in a public place in the presence of one or more persons, and in any place, with intent thereby to insult or offend any person.

The Committee considers that an act of buggery on a person under 18, even with that person's consent, is a sufficiently serious and distinctive behaviour to warrant a separate section in the *Criminal Code*. However, the Committee would continue the present exception where the act is between a husband and his wife with her consent. The Committee recommends that a sentence of imprisonment for less than 14 years be available in cases of buggery where the act is committed on a person under the age of 14. Where the act is committed on a person who is 14 years of age or more and under 18, the maximum punishment should be imprisonment for five years. Non-consensual buggery, including acts committed by a husband on his wife or between persons 18 years of age or older can be charged as sexual assaults under section 246.1, section 246.2, or section 246.3 of the *Criminal Code*, depending on the circumstances. The present buggery offence in section 155 of the *Criminal Code* would be repealed, and so would section 158 (exception for consensual acts in private between husband and wife or any two persons aged 21 or older).

### **Recommendation 5**

**The Committee recommends that section 155 of the *Criminal Code* be amended to provide that:**

1. Every male person who performs an act of buggery on a female person who is not his wife and who is under the age of 18, or on a male person who is under the age of 18, is guilty of an indictable offence and is liable to:
  - (i) imprisonment for less than 14 years, if the person on whom the act is committed is under the age of 14, or
  - (ii) imprisonment for 5 years, if the person on whom the act is committed is 14 years of age or more, and is under the age of 18 years.
2. It is no defence to a charge under this section that the person on whom the act was committed consented to the act, or that the accused believed such person to be 18 years of age or older.



## Bestiality

The Committee considers that the offence of bestiality (sexual intercourse by a male or female person in any manner with an animal) should be retained in the *Criminal Code*,<sup>19</sup> particularly as such conduct may involve the induced or coerced participation of another person.<sup>20</sup>

In the National Corrections Survey, one in 100 convicted child sexual offenders had involved victims in acts of this kind. Where an act of bestiality occurs in the absence of other aggravating factors, a maximum sentence of six months' imprisonment is an adequate sanction. Where, however, a person is induced or coerced to participate in an act of bestiality, or an act of bestiality involving another person takes place in the presence of a young person, the Committee considers that a maximum sentence of 14 years' imprisonment (which is the current maximum for this offence<sup>21</sup>) should be available.

### Recommendation 6

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every one who commits bestiality is guilty of an offence punishable on summary conviction.**
- 2. Notwithstanding section (1) above, every one who**
  - (i) incites, counsels, procures or compels another person to engage in an act of bestiality, or**
  - (ii) engages in an act of bestiality in the presence of, or with the participation of, another person who is under the age of 18 years, is guilty of an indictable offence and is liable to imprisonment for less than 14 years.**
- 3. It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

## Genital and Anal Acts Involving Persons Under the Age of 16

Under the criminal law reforms recommended by the Committee:

Children under the age of 14 would receive absolute legal protection against any form of sexual touching by another person. This would result from the Committee's recommendation (discussed later) that section 246.1 of the *Criminal Code* be amended to provide that the consent of a person under 14 will not, under any circumstances, be a defence for an accused charged with a "sexual assault" offence in respect of such young person;

Girls under the age of 16 would receive absolute legal protection against acts of vaginal sexual intercourse with a male person; and

Young persons of both sexes under the age of 18 would receive absolute legal protection against acts of buggery (anal intercourse) committed on them by a male person.

Accordingly, in the absence of special legal provisions, a young person of 14 years of age or older is capable of giving a valid consent to some forms of sexual conduct with another person. In the judgment of the Committee, the most serious forms of genital and anal sex involving a person under the age of 16 years warrant special attention, and should be excluded from the class of sexual conduct to which a young person under 16 is capable of giving a valid legal consent. Most Canadian provinces and territories allow young persons who are age 16 (and even younger) to marry with parental consent. It would therefore be anomalous to make such a prohibition applicable to young persons 16 or older. In certain circumstances, such conduct involving a person 16 or 17 years of age would be caught by the offence of "abuse of a position of trust", an offence the Committee recommends later. On the other hand, where such conduct is clearly non-consensual, it would of course constitute a "sexual assault" under sections 246.1, 246.2 or 246.3 of the *Criminal Code*, depending on the circumstances.

Such an offence would cover such acts as fellatio, cunnilingus and vaginal or anal penetration with a finger or object where they are committed on a young person under the age of 16, and which go beyond normal adolescent "petting". In the Committee's opinion, it would constitute a more effective and easily understood prohibition than the current offence of "gross indecency", which should be repealed. Depending on the circumstances, the Crown could charge either this offence or one of the "sexual assault" offences in sections 246.1, 246.2, and 246.3 of the *Criminal Code*.

### **Recommendation 7**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every one who, for a sexual purpose, touches a young person in the genital or anal region with any part of his or her body or with any object, is guilty of an indictable offence and is liable to:**
  - (i) imprisonment for less than 14 years, if the complainant is under the age of 14 years; or**
  - (ii) imprisonment for 10 years, if the complainant is 14 years of age or older, and is less than 16 years of age.**
- 2. In this section, "young person" means a person who is under the age of 16 years.**
- 3. It is no defence to a charge under this section that the young person consented to the activity that forms the subject matter of the charge, or that the accused believed that the young person to be 16 years of age or older.**

### **Invitation Cases**

In Chapter 12, *The Sexual Offences*, it is noted that the legal concept of an "assault" causes difficulty where an accused, for a sexual purpose, invites a child to touch him or her (for example, to masturbate him or her), but neither

touches nor threatens to touch the child in return. In these circumstances, Canadian courts have held that, since there is no assault, the question of indecent or sexual assault does not arise.<sup>22</sup> In the Committee's judgment, offensive sexual conduct of this kind which involves children under the age of 14 years should be specifically prohibited in the *Criminal Code*.<sup>23</sup>

### **Recommendation 8**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every person who, for a sexual purpose, invites, counsels, incites or causes a child:**
  - (i) to touch any part of such person's body; or**
  - (ii) to touch any part of another person's body;****is guilty of an indictable offence and is liable to imprisonment for 5 years.**
- 2. In this section,**
  - (i) "child" means a person under the age of 14 years;**
  - (ii) "to touch" includes both direct and indirect physical contact.**
- 3. It is no defence to a charge under this section that the accused believed the child to be 14 years of age or older.**

### **Abuse of Position of Trust**

The Committee's findings from the National Population Survey and the National Police Force Survey indicate that (excluding acts of genital exposure) about one in four of the sexual offences against young persons was committed by persons either prominent in the child's life or by persons to whom the child was particularly vulnerable. Offenders in this group comprised a wide range of persons in a typical child's life: fathers, legal guardians, brothers, uncles, other blood relatives, boarders, baby-sitters, teachers, employers and youth group leaders. The common denominator linking these different classes of offenders was that, by reason of their biological, legal or social relationship to their young victims:

1. Their opportunities for sexually abusing the children "at hand" were greater than ordinary.
2. Correspondingly, their young victims were particularly vulnerable to them.
3. By so acting, these offenders breached the vital position of trust reposed in them due to their special relationship to their young victims.

The criminal law has an important role to play in punishing and, it is hoped, deterring violations of these familial and trust relationships. In the Committee's judgment, this role must be made more explicit in relation both to the sentencing of sexual offenders who abused a position of trust in committing



an offence against a young person, and to the substantive sexual offences in the *Criminal Code*.

*Sentencing Considerations.* Just as the youthful age of a sexual offender should, in general, be regarded as a mitigating factor in sentencing, the violation of a position of familial or social trust in perpetrating a sexual offence against a young person should, in the Committee's judgment, be considered an aggravating factor at the sentencing stage. The principles of specific and general deterrence are particularly relevant to the sentencing of persons who have the greatest opportunities for offending and who selfishly exploit those opportunities. In the context of sexual offences against young persons, these principles have become an accepted part of Canadian sentencing practice.<sup>24</sup> The Committee strongly endorses this development in Canadian sentencing law and the vital social policy it serves to underscore.

*Abuse of Position of Trust.* Implicit in the recommendations put forward is the Committee's belief that normal adolescent "petting" should not be the subject of criminal sanctions. Nor does the Committee consider that, for example, sexual intercourse between a 17 year-old and his 16 year-old girlfriend should be made a criminal offence, in the absence of exploitative or assaultive circumstances.

The situation is quite different, however, where a 40 year-old teacher induces his 17 year-old pupil to engage in sexual intercourse with him, or where a 30 year-old male engages in acts of oral sex with his 16 year-old nephew. In circumstances such as these, the Committee considers that the application of criminal sanctions against such adults is fully warranted. The vital policy served by such an offence is deterrence: the deterrence of those who are in a special position of social trust towards children and who selfishly exploit that position of trust for the purposes of gratifying their own sexual appetites. A classic example of the criminal law's response to abuses of trust is the offence of incest. The incest offence, however, is restricted to persons who are related by blood and applies only where an act of sexual intercourse takes place between specified blood relations (for example, sexual intercourse between a father and his daughter).

The findings presented in this Report reveal that young persons are particularly vulnerable to a wide range of persons in their lives (for example, uncles, teachers, baby-sitters, youth group leaders) and that this vulnerability is not explicitly recognized by the criminal law. In place of the under-inclusive and haphazard provisions directed at step-fathers, foster fathers and male guardians (section 153(1)(a)), employers (section 153(1)(b)) and "owners or masters of vessels" (section 154), the Committee considers that more comprehensive protection must be provided against such abuses of trust, protection more in keeping with the realities of modern social life. We believe that this protection must apply both to a wider range of relationships than has traditionally been recognized and to abuses of trust that involve either sexual intercourse or other forms of sexual touching.

In the judgment of the Committee, only by recognizing and re-affirming the total unacceptability of these abuses of trust can the criminal law provide optimal protection for young persons against those persons to whom they are most vulnerable.

**Recommendation 9**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every one who is in a position of trust towards a young person and who commits a sexual touching with, on, or against such young person is guilty of an indictable offence and is liable to imprisonment for 10 years.
- 2. In this section, “young person” means a person under the age of 18 years.
- 3. In this section, “a sexual touching” includes both direct and indirect physical contact.
- 4. It is no defence to a charge under this section that the young person consented to the activity that forms the subject-matter of the charge, or that the accused believed the young person to be 18 years of age or older.
- 5. Without restricting the generality of the phrase “position of trust”, where the accused, at the time of the offence, stood in any of the following relationships to the young person, he or she shall be conclusively deemed to have been in a position of trust towards such young person:
  - parent
  - grandparent
  - step-parent
  - uncle, aunt
  - adoptive parent
  - boarder in young person’s home
  - foster parent
  - teacher
  - legal guardian
  - baby-sitter
  - common-law partner of child’s parent, step-parent, adoptive parent, foster parent, or legal guardian
  - group home worker
  - youth group worker
  - employer

**Acts of Genital Exposure**

Given the sheer prevalence of acts of genital exposure against children documented in the national surveys, the Committee considers that this form of offensive behaviour should be classified separately and distinctly in the *Criminal Code*. Acts of exposure constitute the largest single category of all types of sexual offences committed against children and youths. In the National Population Survey, one in five females and one in 11 males reported that they had been victims of acts of exposure, and of sexual offences known to the police,

where girls were victims, about two in five had experienced acts of exposure, while in incidents involving boys, about one in seven had been exposed to by another male.

Where such an act is preceded or accompanied by an assault on another person, the offender might be liable to separate and cumulative criminal charges. Other forms of social nuisance or public indecency would be covered separately by section 169 of the *Criminal Code*.

### **Recommendation 10**

**The Committee recommends that section 169 of the *Criminal Code* be retained and that the *Criminal Code* be amended to provide that:**

1. Every one who, for a sexual purpose, exposes his or her genitals to a young person is guilty of an offence punishable on summary conviction.
2. In this section, “young person” means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years.

## **Loitering by Convicted Sexual Offender**

Introduced into Canadian criminal law in 1951, section 175(1)(e) of the *Criminal Code* is a vagrancy offence that was intended to provide a sanction against convicted sexual offenders found loitering or wandering in or near places frequented by children (school ground, playground, public park or bathing area). Due, however, to a drafting error in the most recent re-enactment of this section, the wording in the section does not refer to any sexual offence, and this offence cannot be charged. The Committee believes that the prohibition in section 175(1)(e) should constitute an offence quite separate from any vagrancy offence.

### **Recommendation 11**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

**Every one who having at any time been convicted of any sexual offence under the *Criminal Code* is found loitering or wandering in or near a school ground, playground, public park, or bathing area is guilty of an offence punishable on summary conviction.**

## **Consent by Children**

The review of consent in Chapter 12, *The Sexual Offences*, emphasizes the need to amend the *Criminal Code* to include certain general principles relating to consent by children to sexual offences. One is that conduct not involving force, threats or fear of the application of force, fraud or the exercise of authority may nevertheless vitiate the consent of a child under the age of 14



to the commission of any sexual offence. Another is that while provision may be made for a higher age, consent by a child under 14 to the commission of any sexual offence is never a defence to a charge. More particular provisions regarding consent to sexual offences are more appropriate in relation to specific offences and defences. For example, section 140 of the *Criminal Code* provides that consent is not a defence where an accused is charged under section 146 with sexual intercourse with a female under 14, and the Committee has recommended that this protection be extended to include females under the age of 16.

The *Law Reform Commission of Canada's* 1982 Working Paper on criminal law entitled *The General Part: Liability and Defences* states that “the General Part of criminal law provides those general rules and principles relating to the scope and applicability of the detailed criminal laws found in the Special Part”, but concludes that “consent has strictly nothing to do with the General Part. On the contrary it finds its context in the Special Part.”<sup>25</sup> The examples given above show that consent belongs in both parts: the general principles in the General Part, and the more particular provisions in relation to specific offences and defences in the Special Part. This seems to have been the approach of Sir James Fitzjames Stephen, who included a group of seven consent provisions in his 1877 *Digest of the Criminal Law*<sup>26</sup> [the fourth edition (1887) is one of the sources of our *Criminal Code*], in addition to provisions in relation to specific offences.

The Working Paper’s reasons for assigning consent to the Special Part are that non-consent is an element of certain offences such as assault, and that absence of consent, which the prosecution must prove, is not really a defence at all.<sup>27</sup> But the two consent provisions retained from Stephen’s *Digest*<sup>28</sup> appeared in Part III of the English *Draft Code* of 1879 (another source of our *Criminal Code*), which “deals with matters of justification and excuse for acts which would otherwise be indictable offences.”<sup>29</sup> It is in this less technical sense that defences, including consent, are usually considered.<sup>30</sup> This wider classification included provisions relating to the criminal responsibility of children,<sup>31</sup> and these also appear in the General Part of our *Criminal Code*,<sup>32</sup> together with the consent provisions from the *Draft Code*.<sup>33</sup> The Working Paper would include principles of criminal responsibility regarding children in the General Part of the *Criminal Code*,<sup>34</sup> and it is desirable that the necessary principles relating to consent by children to sexual offences, which are also related to the status of the child, should be included in the same Part.

**Recommendation 12**

**The Committee recommends that in order to provide additional protection for children, the General Part of the *Criminal Code* be amended to provide that:**

- 1. Conduct not involving force, threats or fear of the application of force, fraud, or the exercise of authority may nevertheless vitiate the consent of a person under the age of 14 years to the commission of any sexual offence.**

2. While provision may be made for a higher age, consent by a person under 14 to the commission of any sexual offence is never a defence to a charge.

## Amendments Introduced in January, 1983

For the reasons extensively documented in the Report, the Committee considers that a legal defence based on the closeness in age of the accused to the complainant, whether in relation to acts of sexual intercourse or in relation to other sexual behaviours, would remove protection from young persons and may even have the unintended result of encouraging their exploitation.

The Committee is strongly of the view that the existing "closeness in age" defence in section 246.1(2) of the *Criminal Code* should be repealed.

### Recommendation 13

**The Committee recommends that section 246.1(2) of the *Criminal Code* be repealed, and that the following provision be substituted in its place:**

**Where an accused is charged with an offence under sub-section(1) or section 246.2 or 246.3 in respect of a person under the age of 14 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.**

## Repeal of Out-dated Provisions

In furtherance of the Committee's objective of promoting a rational framework of sexual offences which is clearly related to the protective ends the criminal law should serve, the Committee recommends the repeal of several existing sexual offences. Some of these have become outmoded (for example, the offences of "gross indecency" and "seduction under promise of marriage"); others have been extensively reformulated by the Committee in order to provide greater protection for young persons (for example, the offences of buggery and bestiality). The Committee remains unconvinced that the offence of "contributing to juvenile delinquency" in section 33 of the *Juvenile Delinquents Act* does not play a useful role in the protection of young persons. However, the Committee does not consider that, in view of its other recommendations, a new offence based on this offence is either necessary or desirable as a means of regulating sexual misconduct by adults with young persons.

In the Committee's opinion, the implementation of its criminal law recommendations will result in a much more reasonable and economical legal framework for dealing with sexual offences against young persons.

## Recommendation 14

The Committee recommends that the following sections of the *Criminal Code* be repealed:

*Sections 141 and 168(2)*

One year limitation period in which to prosecute certain sexual offences. These sections are no longer applicable in light of the Committee's recommendations, and the Committee is opposed to any limitation period on prosecutions for sexual offences against children.

*Section 147*

Provision that no male person under 14 shall be deemed to commit an offence under section 146 or section 150.

*Section 151*

Seduction of female between 16 and 18 years of age.

*Section 152*

Seduction under promise of marriage.

*Section 153*

Illicit sexual intercourse with step-daughter, foster daughter or female ward, or with female employee. These behaviours would be prohibited by the Committee's "abuse of position of trust" offence.

*Section 154*

Seduction of female passenger on board a vessel.

*Section 155*

Buggery or bestiality. This section has been reformulated by the Committee.

*Section 157*

Gross indecency.

*Section 158*

Exception concerning private consensual sexual conduct. This section is no longer necessary in light of the Committee's reformulation of section 155 and recommendation for repeal of section 157.

## Sexually Transmitted Diseases

With respect to the elements specified in the section 253 offence in the *Criminal Code*, it appears on clinical grounds that a considerable proportion of persons having sexually transmitted diseases may in fact be unaware that they are infected. In many instances either information is not volunteered by patients concerning the identities of their partners or, where this information is known, it is not listed in clinical records. According to the communicable disease specialists consulted by the Committee, the major obstacle in identifying sexually transmitted diseases is the reluctance by physicians to report these



cases and, in many instances, the provision of treatment without the benefit of laboratory examination of specimen cultures. These non-reporting practices have become so widespread that the enforcement of section 253 of the *Criminal Code* has effectively ceased.

The evidence available to the Committee concerning sexually transmitted diseases contracted by children and youths indicates the serious nature of the health risks associated with these conditions. However, in light of the entrenched and pervasive social and professional forces which militate against the effective application of this law, the Committee recommends that section 253 be repealed. In its place, we recommend: that provincial health regulations and statutes be sharply strengthened; that more effective surveillance and diagnostic criteria be developed; that extensive research be undertaken to obtain necessary information; and that information about the health risks of these diseases be incorporated in the national programs of public education and health promotion recommended by the Committee.

Present provincial regulations and statutes concerning venereal disease control are inadequate. Two of the diseases currently listed, syphilis and gonorrhea, are of serious public health significance. Others constituting serious risks to the health of young children and youths are not considered, for instance, non-gonococcal urethritis and genital infections, genital herpes and certain complications of these (e.g., neo-natal herpes).

To establish a more accurate estimate of the actual magnitude of the problems of sexually transmitted diseases in Canada, the Committee recommends that a national program be undertaken to define and validate diagnostic criteria for all sexually transmitted infections, to document their prevalence, particularly among young persons, and to assess which of this group are serious in their implications and therefore should be reported. Once this list is established, the Provincial Colleges of Physicians and Surgeons and their equivalents in each province and professional medical associations should be enlisted to support compliance in reporting of the selected listed conditions.

As a result of the potential long-term complications or disabilities associated with sexually transmitted diseases, it is imperative in the Committee's judgment that more comprehensive and detailed information be obtained with respect to: the knowledge by children and youths about the signs of sexually transmitted diseases; the number of children and youths who report that they have contracted these infections, and the age and sex of their partners; the steps taken to seek and obtain medical attention; and the identification of the long-term harms resulting from these diseases. The information obtained should constitute the basis of a national program of public education and health promotion.

### **Recommendation 15**

**The Committee recommends that section 253 of the *Criminal Code* be repealed.**

## Recommendation 16

The Committee recommends, in connection with the repeal of section 253 of the *Criminal Code*, that the Office of the Commissioner, in conjunction with the Department of Justice and the Department of National Health and Welfare in consultation with the provinces and non-governmental agencies appoint an expert interdisciplinary advisory committee having assigned responsibilities:

1. To conduct comprehensive research at a national level to document the known prevalence of sexually transmitted diseases contracted by children and youths and to assess the health risks involved.
2. To develop ways of collecting information in a standard fashion across jurisdictions with regard to the occurrence of sexually transmitted disease, for children and youths under the age of 16 years.
3. To advise on the updating of the group of sexually transmitted disease protocols of standard and expected treatment practice, and separately advise on which of these diseases should be made reportable in relation to cases involving children and youths under the relevant provincial statutes and regulations, and in this regard, the full participation and co-operation of the Provincial Colleges of Physicians and Surgeons, and their equivalents, be sought to take an active role to encourage compliance in reporting.
4. To review the classification of sexually transmitted diseases and to make recommendations in relation to the modernization of the existing categories used in medical and hospital information systems across Canada.
5. To undertake a national survey of the experience and knowledge of children, youths and adults about sexually transmitted diseases and pregnancy, and to make recommendations with respect to the development of programs of public education and health promotion focussing upon the more effective provision of preventive and treatment services.

## Dangerous Offenders

Part XXI of the *Criminal Code* contains the statutory provisions authorizing the preventive detention, for an indeterminate period, of offenders, whose conduct meets the criteria specified in that part. Central to these provisions relating to dangerous offenders is: that these persons have been shown to have committed a 'serious personal injury offence'. Additional necessary grounds which, when established, permit a court to find the convicted persons to be dangerous offenders include conduct in any sexual matter by which they have shown a failure to control their sexual impulses and a likelihood of their causing injury, pain or other evil to other persons in the future.

The Committee obtained documentation from Correctional Service Canada for all persons in custody or under supervision who had been found to be dangerous and who had committed sexual offences against children and



youths. When this information was obtained, these 62 dangerous child sexual offenders constituted over half (54.4 per cent) of all offenders for Canada designated as being dangerous and three in four (73.8 per cent) of all dangerous sexual offenders.

When the circumstances of the sexual offences committed by dangerous child sexual offenders are compared to those committed by other convicted male child sexual offenders, it was found that the main dimensions of the conduct involved in the offences committed by both groups were remarkably similar. The two groups did not differ substantially with respect to the use of threats or physical force against victims. While there was a trend towards more serious acts having been perpetrated by dangerous child sexual offenders, these differences were relatively small. A sizeable proportion of convicted offenders who were not designated 'dangerous' had committed similar sexual acts against victims. While double the proportion of the victims of dangerous child sexual offenders had been physically injured compared to the victims of other convicted child sexual offenders, four in five victims in the former group were not reported to have been physically harmed. While one in five dangerous offenders had long criminal records, the rate of recidivism for four in five dangerous offenders was similar to the record of other convicted child sexual offenders having previous convictions.

In light of the findings of the National Corrections Survey, there can be no doubt that the application of the legal provisions pertaining to dangerous offenders, in instances where sexual offences against children and youths had been committed, is not made on a consistent and uniform basis. In 1969, the *Ouimet Report* documented that there was an uneven application of the then existing provisions. Despite amendments made to this legislation in recent years, the Committee's findings clearly show that sharp regional disparities still persist in this regard.

Many offenders convicted of having committed serious acts are not designated as 'dangerous' offenders; and of those so classified, many appear to have committed offences which are no graver than those perpetrated by other convicted child sexual offenders.

In the Committee's judgment, the options with respect to these provisions, which are now inequitably applied, are clear in relation to persons convicted of sexual offences against children and youths. Either the provisions should be amended, or new separate legislation should be introduced to provide added protection for children against sexual offences.

### **Recommendation 17**

#### **The Committee recommends that:**

- 1. The provisions in Part XXI of the *Criminal Code* relating to dangerous offenders convicted of sexual offences against children and youths be amended to:**



- (i) specify the major sexual offences in the definition of “serious personal injury offence”;
  - (ii) specify the conduct by which a sexual offender shows his disregard for others, and in particular, for children; and
  - (iii) indicate clearly that physical or mental harm is not a requirement in the case of child victims of sexual offences.
2. In keeping with the above amendments, which focus on specific conduct and offences, any mention of the prediction of future behaviour be deleted from dangerous offender legislation.
  3. If the above amendments are not enacted, new legislation, separate from the dangerous offender provisions and meeting the proposed requirements, should be enacted to provide added protection for children against sexual offences.

## Principles of Evidence

### Evidence of Children

The Committee is strongly of the view that Canadian children cannot fully enjoy the protection the law seeks to afford them unless they are allowed to speak effectively on their own behalf at legal proceedings arising from allegations of sexual abuse. The Committee recommends that there be no special rules of testimonial competency with respect to children; a young person's testimony should be heard and weighed by the trier of fact in the same manner as the testimony of any other witness in the proceedings. Given the generally private nature of child sexual abuse, the overarching legal principle that all relevant evidence should be admissible in court takes on added significance.

The Committee draws support for its approach to children's testimony from the following grounds.

To make a child's testimonial competency contingent upon or influenced by the child's age fails to take into account the cognitive and developmental differences among children of the same age and, in the Committee's view, is wrong in principle.

The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have become very close together in practice, notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers that the subtle practical distinction between these two tests is too tenuous a basis upon which to attach a legal distinction.

The Committee's research findings indicate that the conventional assumptions about the veracity and powers of recall and articulation of young children are largely unfounded and, in any event, vary significantly among different children, as they do among adults.

Permitting the trier of fact to determine the weight that should be accorded a child's testimony and generally to assess the child's credibility, without "qualifying" the child witness beforehand, is by no means unprecedented in common law jurisdictions.

The approach to children's evidence advocated by the Committee finds additional support in the *Evidence Code* proposed by the *Law Reform Commission of Canada*.

### **Recommendation 18**

**The Committee recommends that the *Canada Evidence Act*, the *Young Offenders Act* and each provincial and territorial evidence act be amended to provide that:**

- 1. Every child is competent to testify in court and the child's evidence is admissible. The cogency of the child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility.**
- 2. A child who does not have the verbal capacity to reply to simply framed questions could be precluded from testifying.**
- 3. The court shall instruct the trier of fact on the need for caution in any case in which it considers that an instruction is necessary.**

In the Committee's view, these reforms would help to ensure that Canadian children receive the full benefit of the protection the law seeks to afford them.

## **Corroboration**

The Committee considers that the current state of the law with respect to the corroboration of an "unsworn" child witness's testimony is unacceptable. This conclusion is based on the following reasons.

The legal tests for the reception of children's evidence either sworn or unsworn have come very close together in practice, notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers this an arbitrary distinction.

With respect to the unsworn evidence of a child, the wording of section 586 of the *Criminal Code* is different from the wording of section 16(2) of the *Canada Evidence Act* and section 61(2) of the *Young Offenders Act*, in the absence of any indication whether the corroboration required by these provisions differs depending on the legal context in which the issue of corroboration arises. Section 61(2) of the *Young Offenders Act* is similar to section 16(2) of the *Canada Evidence Act*.

The Committee's research findings indicate that the assumptions on which the special requirement of corroboration for young children's evidence are based, are largely unfounded.

## **Recommendation 19**

### **The Committee recommends:**

- 1. That there be no statutory requirement for the corroboration of an "unsworn" child's evidence. The implementation of this recommendation would involve the repeal of section 586 of the *Criminal Code*, section 16(2) of the *Canada Evidence Act*, and section 61(2) of the *Young Offenders Act*, and corresponding sections of provincial evidence acts.**
- 2. That the statutory corroboration requirements in sections 195(3) [procuring] and 253(3) [communicating a venereal disease] of the *Criminal Code* be repealed.**
- 3. For greater certainty, that the *Criminal Code* be amended to provide that the "corroboration not required" provision in section 246.4 of the *Criminal Code* applies to *all* sexual offences, and not only to those offences currently listed in section 246.4.**

These reforms would place the testimony of a child in no better or worse position than that of an adult, which the Committee believes is the correct legal approach in principle. The cogency of a given child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility or presumed unreliability, as is currently the case. The reforms recommended by the Committee would be consistent with the accused's right to make a full answer and defence to the charges against him or her. The accused retains his or her traditional rights of cross-examination and of address to the jury. Further, the Crown bears the strict onus of proving its case beyond a reasonable doubt.

## **Complaints by Victims**

Although the Committee agrees with the abrogation of the "recent complaint" doctrine effected in 1983, it should be noted that section 246.5 of the *Criminal Code* states only that the "rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated". On its face, the section would appear to abrogate the recent complaint doctrine only with respect to the "sexual assault" offences in sections 246.1, 246.2 and 246.3 of the *Criminal Code*. At common law, however, the doctrine of recent complaint applied to all sexual offences, whether or not the complainant's consent was in issue. Further, a number of sexual offences against young persons do not require that the child be "assaulted" in the legal sense, for example, incest, gross indecency, and the unlawful sexual intercourse offences. The credibility of a child victim of one of these offences may, accordingly, still be impugned under the recent complaint doctrine if the child does not complain of the incident at what the



court considers to be the first reasonable opportunity. The Committee considers this to be wholly unsatisfactory.

The Committee considers that the remarks the child or young person makes on reporting the incident often constitute the most cogent possible evidence and should not be excluded from the trier of fact's consideration. In the Committee's judgment, this form of evidence should be admissible on the basis of a statutory exception to the hearsay rule.

### **Recommendation 20**

**The Committee recommends that section 246.5 of the *Criminal Code* be amended to provide that:**

**The rules relating to evidence of recent complaint are abrogated with respect to *all* sexual offences.**

## **Hearsay**

Hearsay evidence is dealt with extensively in Bill S-33 and, in general, the Committee considers that the treatment of hearsay evidence in this proposed legislation is adequate. However, there is one form of crucially relevant evidence in the context of child sexual abuse for which these proposals do not explicitly provide. An out-of-court statement made by a young child which indicates that the child may have been sexually abused is inadmissible hearsay unless the circumstances of the statement fall within one of the established exceptions to the hearsay rule. Given the nature of sexual abuse of young children, however, such statements typically will not fall within any of the established or proposed hearsay exceptions. In the Committee's view, neither the exceptions to the hearsay rule at common law, nor the statutory proposals of Bill S-33, offer sufficient opportunities for the out-of-court statements of young children to be admitted in evidence for the purpose of proving that the matters asserted in those statements are true.

The exceptions to the hearsay rule at common law have traditionally been justified on the dual bases of necessity and presumed trustworthiness. That the admission into evidence of a young child's express or implied allegation of sexual abuse is necessary in order to reach a proper and just legal determination can scarcely be doubted. Where the child has made such a statement but is deemed legally incompetent to testify in court, the trier of fact will often be precluded from hearing potentially the most relevant evidence in the case, namely, the content of the child's statement. Alternatively, where the child is competent to testify, several considerations combine to justify, in appropriate cases, the narration of the child's statement by the person who received it. Further, where the child does testify in court, his or her perceived credibility as a witness will be a critical factor in the outcome. Allowing the recipient of the child's statement to testify concerning its content would enable the trier of fact to assess the child's credibility on a more realistic basis.

In the Committee's view, whether a child's previous statements relating to his or her sexual abuse should be admitted in evidence as an exception to the hearsay rule is best approached on a case-by-case basis. An inflexible rule, whether inclusionary or exclusionary, would fail to take into account the wide variability of circumstances from one case to the next and would be wrong in principle.

### **Recommendation 21**

**The Committee recommends that the *Canada Evidence Act*, each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure* be amended in order to provide that:**

- 1. A previous statement made by a child when under the age of 14 which describes or refers to any sexual act performed with, on, or in the presence of the child by another person.**
- 2. Is admissible to prove the truth of the matters asserted in the statement.**
- 3. Whether or not the child testifies at the proceedings.**
- 4. Provided that the court considers, after a hearing conducted in the absence of the jury, that the time, content and circumstances of the statement afford sufficient indicia of reliability.**
- 5. "Statement" means an oral or a recorded assertion and includes conduct that could reasonably be taken to be intended as an assertion.**

The Committee considers that such a provision would strike an appropriate balance between the dictates of necessity and testimonial trustworthiness.

## **Sexual Conduct of the Complainant with Persons Other Than the Accused**

The Committee considers that the amendments introduced in 1983 provide sufficient safeguards against unjustified inquiries into the complainant's past sexual conduct or sexual reputation, where the accused is charged with a form of "sexual assault". These amendments take into account the need to protect the complainant and preserve the accused's fundamental right of making a full answer and defence to the sexual assault charge against him or her.

These reforms, however, fail to provide any additional protection at all to young persons who are victims of a sexual offence other than a form of sexual assault, for example, incest, gross indecency and sexual intercourse with a female under age 14. In trials concerning the latter offences, the common law assumption that an unchaste young person is more likely to be untruthful will continue to operate. Consequently, insinuations concerning a young complainant's sexual history may still be admissible simply to impeach his or her credibility as a witness. In the Committee's view, this state of affairs is unacceptable.

## Recommendation 22

The Committee recommends that the *Criminal Code* be amended to provide that:

1. Sections 246.6 (1)(a) and 246.6 (1)(b), and the corollary provisions in sections 246.6 (3) through 246.6 (6), apply to *all* sexual offences.
2. Section 246.7 applies to *all* sexual offences.

These amendments would ensure that the complainant's past sexual conduct would be inadmissible merely to impeach his or her credibility as a witness, and would finally extinguish the dubious common law assumption that there is a direct correspondence between chastity and veracity. Since the Committee also recommends that the concepts of "previously chaste character" and "more to blame" be extinguished from Canadian criminal law, there would be no inconsistency between these recommendations and the Committee's recommendations concerning amendments to the substantive criminal law of sexual offences.

## Evidence of an Accused's Spouse

Recent years have witnessed an expansion of the kinds of offences for which the victim spouse will be considered competent to testify against the offending spouse. This development has been broadened to include offences directed, not only against the spouse of the offender, but also against a child of the family. As a consequence of the amendments to section 4 of the *Canada Evidence Act* introduced in 1983, the wife or husband of a person charged with virtually any sexual offence against a young person is a competent and compellable witness for the Crown, and this applies also to other assaultive offences where the offending spouse's victim is under the age of 14.

The rules of evidence relating to spouses in child welfare proceedings are governed by provisions of the various provincial "child welfare" laws, or by provincial evidence acts, or by both. There is uncertainty in a number of jurisdictions about whether a spouse who is compellable at a child welfare proceeding may also be compelled to disclose relevant communications made to him or her by the other spouse during their marriage.

The Committee considers that, in cases of alleged sexual or physical abuse of a young person, the social importance of making available to the court all probative evidence far exceeds that of ostensibly protecting a marital relationship. That the sexual abuse of young persons, by its very nature, is difficult to prove makes it even more crucial that all potentially relevant testimony, whether elicited from the offender's spouse or from an other party, should be accessible to the judicial process. Public policy and children's safety alike require that probative evidence should not be withheld.



## Recommendation 23

The Committee recommends that:

1. The *Canada Evidence Act* be amended to provide explicitly that, where a spouse is competent and compellable pursuant either to section 4(2) or 4(3.1) of that Act, the privilege of non-disclosure contained in section 4(3) may not be claimed by that spouse.
2. Each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure*, be amended to provide explicitly that, where a spouse is otherwise competent and compellable at a child welfare proceeding, such spouse may not claim any privilege of non-disclosure relating to inter-spousal communications.

## Similar Acts

The doctrine of similar fact evidence tends to afford protection for sexually abused young persons. It allows the previous sexual behaviour of the accused with the same child or with others to be used to show that the accused may be guilty of the sexual offence charged, while safeguarding the accused against far-fetched inculpatory inferences based on his or her prior behaviour.

In light of these considerations, the Committee recommends that this evidentiary doctrine be retained. Further, the Committee considers that the “similar acts” exception to the character evidence rule should not be codified, and in this respect, agrees with the *Federal/Provincial Task Force on Uniform Rules of Evidence* and with the legislative proposals of Bill S-33.

Evidence of past incidents of child abuse by parents (evidence of “past parenting”) has an important role to play in child welfare proceedings, in determining whether a child is in need of protection from a particular person or persons and, if so, the most appropriate legal disposition vis-a-vis the child. The Committee considers that the court should have before it all relevant evidence in making these determinations.

## Recommendation 24

With respect to provincial child welfare legislation, the Committee recommends that a provision similar to section 28(4) of the *Ontario Child Welfare Act* be enacted in each province and territory. Section 28(4) of that Act provides:

Notwithstanding any privilege or protection afforded under the *Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person’s care, and any statement or report

whether oral or written, including any transcript, exhibit or finding in a prior proceeding whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.

## Public Access to Hearings

The Committee acknowledges the vital importance of keeping criminal trials open to public scrutiny. In the Committee's view, the limited exceptions to this principle sanctioned by section 442(1) of the *Criminal Code* and by section 39 of the *Young Offenders Act* are both appropriate on policy grounds and sufficiently narrow to be defensible on constitutional grounds. However, the Committee concludes that, for the sake of greater clarity, these provisions should be amended in order to facilitate obtaining the full and spontaneous account of the child's evidence.

Where, for example, the presence of a public "gallery" in the courtroom would prevent a child or other young witness from giving as clear, full and spontaneous an account of his or her evidence as would be possible if his or her evidence was heard *in camera*, there should be express statutory authority for excluding the public.

The question of public access to child welfare proceedings is grounded in somewhat different considerations. Canadian provinces and territories have taken widely varying positions on this question, in accordance with their differing views about the most workable model for resolving child welfare controversies and the most appropriate set-off between public scrutiny and institutional effectiveness. In light of the Committee's research findings that most children are not considered to be harmed by participating in criminal or child welfare proceedings, whether open or closed, the Committee considers it inadvisable to recommend a single, uniform approach to this issue in the context of child welfare proceedings.

### Recommendation 25

**The Committee recommends that the *Criminal Code*, the *Young Offenders Act* and each child welfare act or equivalent contain a provision authorizing a judge to proceed *in camera* where such a course is required in order to obtain a full and candid presentation of a child's testimony. The proper administration of justice requires that the "best evidence" of all parties be accessible to the judicial process.**

In the Committee's view, an emphatic change of attitude towards young sexual victims and young witnesses generally would do much to reduce the anxiety of the courtroom experience for children, for example:

1. The inculcation of a strong presumption on the part of parents, teachers, doctors, police officers, social workers, Crown attorneys and others that a

child's allegation of sexual abuse is true, and that it warrants immediate investigation and follow-up.

2. The employment of police officers and social workers specially trained in the management of cases of child sexual abuse and in child interviewing techniques, and the continued support from such persons throughout the investigative and judicial stages.
3. The training of Crown attorneys in the special social and legal issues of child sexual abuse, and the use of such attorneys in all contemplated child sexual abuse prosecutions.
4. The thorough preparation of child witnesses for the courtroom experience, in a manner appropriate to the child's intellectual and emotional development.
5. Where possible, and consistent with the accused's procedural and constitutional rights, the provision of special court facilities enabling a young child's testimony to be elicited in a more informal legal atmosphere.

These steps, as well as others advocated by the Committee, would materially improve the opportunities for children to speak effectively in their own behalf.

## Publication of Victims' Names

In its review of the policies and practices concerning the publication of the names of children and youths who were victims of sexual offences, the Committee: monitored news articles concerning sexual offences published for a year in 34 newspapers across Canada; undertook a review of legal judgments reported by major legal reporting services; and requested the editor of each of these reporting services, and the Chief Justice or Chief Judge of every Canadian court having criminal jurisdiction to provide information concerning its policy in this regard.

Of the 2806 news articles reviewed in 34 newspapers, information was given in 11 reports (0.4 per cent) that tended to identify complainants who were children or youths. The Committee found that the practice of Canadian newspapers with respect to restricting the publication of information which might serve to identify young victims of sexual offences was one of commendable restraint. With few exceptions, the identities of young victims were not reported.

In its review of cases published by legal reporting services and the transcripts of court decisions, the Committee found 189 instances in which the identities of children and youths who had been victims of sexual offences had been disclosed. This number is a conservative estimate. Between 1970 and 1982, there were 111 cases in which young complainants were named, over two-thirds of which involved decisions by provincial Courts of Appeal. With



respect to the likelihood of being named, the young complainants of sexual offences are at greater risk of being identified in published accounts of legal reporting services and the transcripts of court decisions than they are of such disclosures being made in the nation's newspapers.

In the Committee's judgment, this practice which may be harmful to children is an unacceptable invasion of their privacy. It should cease.

Although the commercial reporting of legal decisions involves both the courts and the legal reporting services, the responsibility for ensuring that the identities of victims of sexual offences are not disclosed lies, in the Committee's opinion, primarily with the courts and with their administrative personnel. If appropriate deletions are made "at the source", there is no possibility that sexual victims will subsequently be identified in commercially published legal reports, which are dependent on this source. In the Committee's view, this responsibility of the courts should be given express statutory force by way of immediate amendments to the *Criminal Code*.

The Committee's research findings indicate that the record of provincial family courts, acting under express statutory guidelines in provincial enactments, is exemplary in this regard; it is not unreasonable to assume that Canadian courts of criminal jurisdiction would be equally attentive in the face of a clear directive from Parliament.

### **Recommendation 26**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. In relation to any sexual offence contained in Part IV, Part V, or Part VI of the *Criminal Code*, no one shall publish any report in which the Christian name or surname of the child, or in which any information serving to identify the child, is disclosed.**
- 2. "Information serving to identify the child" includes, but is not restricted to:**
  - (i) the name of the offender, where the offender is biologically or legally related to the child, or has the same name as the child;**
  - (ii) the address of the accused or the child;**
  - (iii) the school that the child attends, or the child's place of employment;**
  - (iv) the address or location where the offence is alleged to have been committed; and**
  - (v) the names of any witnesses whose relationship to the child or to the accused might give an indication of the child's identity.**
- 3. The prohibition referred to in point (1) above is automatic, and does *not* require an application by the complainant, the Crown or the accused.**
- 4. The prohibition attaches immediately upon either the laying of an information against the accused, the preferring of an indictment against the accused, or the arrest of the accused, whichever occurs first.**

5. The prohibition is of indefinite duration, and attaches to all stages of the proceedings.
6. The prohibition extends to the print media, the electronic media, published court transcripts and the legal reporting services.
7. Any one who fails to comply with this provision is guilty of an offence punishable on summary conviction.

(Implementation of these recommendations will require consequential amendments to sections 246.6, 261, 442, 457.2, and 467 of the *Criminal Code*, and to sections 38 and 16 of the *Young Offenders Act*).

## Recommendation 27

The Committee further recommends that each court having criminal jurisdiction in Canada designate an officer whose responsibility it is to ensure that these provisions are complied with, and that each legal reporting service in Canada do likewise.

In the judgment of the Committee, prompt implementation of these recommendations will help to ensure that children and youths who have been victims of sexual offences are treated by the legal system with the respect and consideration that is due to them.

## Strengthening the Provision of Services

The problems and harms experienced by sexually abused children and youths require sensitive and caring attention given by as few persons as possible whose efforts are strongly complemented by other services to ensure that their needs are provided for and that their protection is assured. In relation to providing assistance for these children, the Committee found that there was a broad spectrum with respect to the range, comprehensiveness and quality of the services provided. In each of the main services — police, hospitals and child protection agencies — a number of special programs have been developed which seek to provide a full range of services to meet the needs of young victims. These special programs, however, are the exception. The deficiencies documented in the Committee's research frequently included: inadequate assessment and investigation; omission of referrals that were warranted; and insufficient follow-up in order to assure the long-term safety and well-being of the child.

To redress these deficiencies, the Committee believes that a combination of measures is required, including: publicizing widely the work of special programs; adoption of common minimum standards between services for the assessment, investigation and treatment of sexually abused children; significant changes in provincial child welfare legislation and the current operation of the child abuse registers; development of medical examination protocols; and realignment of medical payment schedules in accordance with the responsibilities involved.

## Special Programs

Special programs for child sexual abuse which provide for comprehensive assessment, investigation and treatment have been developed by a number of police forces, hospitals and child protection services across Canada. However, because most of these programs have been developed in recent years, the Committee found that there was virtually no published documentation for Canada in relation to any of the main services providing care for sexually abused children.

As a means of better informing the public and other professional workers about these special programs, the Committee believes that national conferences should be held at which the experience of the major services would be presented and with the reports being published and widely disseminated.

### **Recommendation 28**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, the provinces and non-governmental agencies convene national conferences pertaining to child sexual abuse with the reports being published and widely disseminated, including:**

- 1. Special Youth Programs of Police Forces.**
- 2. Special Medical and Hospital Programs.**
- 3. Special Child Protection Programs.**
- 4. Special Community and Voluntary Association Programs.**

## Uniform Minimum Procedures for Services Provided

A major deficiency in the provision of services for sexually abused children is the absence of any consistent practice in how services are provided by the public agencies. While regional variation and flexibility may be hallmarks in the provision of social, medical and police services across Canada, their consequences for sexually abused children mean that a child in one province receives very different services and protection than a child in another province. The provision of these services is unco-ordinated; it lacks reasonable uniformity. These children must be better protected and more equitably served.

At a time when resources for all types of public services are limited and becoming scarcer in relation to meeting potentially infinite service needs, no single group can reasonably expect that it will be assigned its full requested quota of funding and personnel. There is a more important issue, namely, that involving the need for more effective co-ordination of efforts between public agencies providing complementary services to sexually abused children. There can be no doubt in relation to these issues — more complete assessments, more complete investigations and more effective continuing follow-up of cases —



that the protection afforded these children must be strengthened and that this must be done promptly by each level of government. There is no agreement and few statements concerning what constitutes the minimum necessary level of assessment and care of sexually abused children.

### **Recommendation 29**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, Provincial Attorneys-General, Departments of Health and Child Protection Services and non-governmental agencies:**

- 1. Develop minimum standards of services to be provided by each of the main public services (police, medical and child protection services) in relation to the investigation, assessment and care of sexually abused children. These standards, pertaining to each service, should specify, among other considerations, that:**
  - (i) every one must report cases of child sexual abuse to the police and/or to child protection services;**
  - (ii) it be mandatory that all cases of child sexual abuse that constitute sexual offences under the *Criminal Code* be reported to the police;**
  - (iii) an initial assessment is to be made promptly and no later than 24 hours following notification;**
  - (iv) a medical assessment be made of the physical and mental state of all cases of child sexual abuse;**
  - (v) there be clear documentation of services provided and that long-term monitoring be undertaken to assure that the child is at no further risk of being harmed; and**
  - (vi) a procedure be established to review reports of child sexual abuse and ensure that the needs of the children are being adequately met.**
- 2. That legislation be enacted to specify these standards and to assure that they are being met in the assessment and care of these children.**

### **Medical and Hospital Services**

While the Committee recognizes that matters relating to the provision of health care fall largely under the jurisdiction of the provinces, it believes that a national initiative is required in order to develop procedures and guidelines for the clinical assessment and treatment of sexually abused children. The Committee is also cognizant of the fact that a number of other legislative and advisory bodies have made somewhat comparable recommendations. The recommendations that the Committee proposes are both feasible and warranted.

## Recommendation 30

### The Committee recommends that:

1. The Office of the Commissioner, in conjunction with the Department of Justice, the Department of National Health and Welfare, and Provincial Departments of Health and Provincial Departments of the Attorneys-General, establish on a short term basis an interdisciplinary expert advisory committee to develop a standard protocol for the collection of information, examinations to be conducted, findings to be recorded and other necessary procedures.
2. This protocol be made widely available, particularly to those likely to have the first contacts, (such as paediatricians, family practitioners and the staff of emergency departments), that regular in-service instruction be provided in its appropriate use, and that a reimbursement item be developed to compensate for the time required for the completion of the protocol.

The Committee believes that a national initiative along the lines recommended would be one means to strengthen the care and protection of sexually abused children by serving: to alert health professionals to the signs of these problems; to indicate the types of examinations and procedures it may be appropriate to consider and undertake for these children; to provide a basis for the clear specification of how these children may have been harmed and the follow-up required for their assessment and care by medical and social services; and to develop criteria that are both medically and legally specific in the collection and documentation of evidence.

## Provincial Child Welfare Statutes

The Committee obtained extensive findings from its several national surveys in relation to referrals involving child sexual abuse to child protection services. On the basis of these findings, the Committee reaches the inescapable conclusion that the process of referral envisioned by provincial legislators and relied upon by child protection services is operating randomly and inefficiently. It is evident that child protection services are neither extensively turned to directly by sexually assaulted victims nor do they receive referrals on a sizeable proportion of cases known to the police, hospitals or voluntary community agencies and services.

The provincial statutes are of little value in terms of providing any real guidance or practical assistance to officials responsible for child care and protection, or in specifying clearly the basis upon which decisions are to be made whether incidents of child sexual abuse are to be dealt with under the terms of child protection legislation or under the sexual offences in the *Criminal Code*. On the basis of its findings, the Committee concluded that it is the organiza-

tion of child protection services, and not only the specific wording of any particular provincial statute, that affects the provision of assistance to sexually abused children. In this regard, sharply contrasting approaches have evolved in the administration and operation of different child protection services which have markedly different consequences in relation to affording assistance and protection for sexually abused children.

The Committee considered whether the statutory authority under which child protection services function should specify child physical and sexual abusive assessment responsibility in addition to the broad concepts of neglect and protection. As documented in the Report, there can be no doubt that more adequate assessment of cases of child sexual abuse is required.

### **Recommendation 31**

**The Committee recommends that Provincial Ministers responsible for Child Protection Services:**

- 1. Review provincial child welfare legislation to ensure the specification of assessment procedures to be undertaken on behalf of sexually abused children.**
- 2. Introduce any appropriate amendments to this effect.**
- 3. Develop a standard protocol for the collection of information, assessments to be conducted, findings to be recorded and other necessary procedures (e.g., reporting, referrals, etc.).**
- 4. Make this protocol widely available, particularly to those likely to have first contacts with sexually abused children and that instruction be provided in its appropriate use.**

## **Child Abuse Registers**

Registers, or analogous record-keeping systems, are authorized by the child welfare legislation of eight provinces. On the basis of its research findings concerning the use of child abuse registers, the Committee found that:

- A sizeable proportion of cases of child sexual abuse known to the police, physicians and child protection workers was not reported to child abuse registers.
- Reports to registers had only been made in one in three cases of previous instances of child sexual abuse of cases currently open.
- Proportionately more minor than serious sexual offences were reported.
- Child protection workers had consulted registers in relation to only one in five cases which were open.
- Procedures relating to the exchange of information between provinces were inconsistent and lacked formal structure.
- Several provinces having registers had no formal procedures with respect to the periodic review of cases listed in the files of registers.



In the Committee's view, in relation to the reporting of child sexual abuse, provincial child abuse registers are clearly not being used to the extent or in the manner intended by legislators. The utility of their functions appears also to be severely limited as case catalogues, research aids, or assessment tools.

### **Recommendation 32**

**The Committee recommends with respect to the procedures and operation of child abuse registers concerning the notification of child sexual abuse in provinces where these reporting systems have been established that:**

- 1. The Annual Conference of Provincial Directors of Child Welfare review the operation of these registers.**
- 2. In each province, the Department of the Attorney General and the Department responsible for Child Protection Services review the legal aspects of procedures concerning the entry of names, notification, expungement and exchange of information between provincial registers.**
- 3. Provincial Child Abuse Registers be discontinued unless their use can be changed to provide an effective means of protection for sexually abused children and youths.**

The use of the registers is characterized by a selective reporting of cases, an infrequent consultation by workers and an absence of effective means of exchanging information between provinces. This system cannot be construed as one that is particularly helpful in affording protection to sexually abused children. What is required is a central source of pooled information for each province rather than the existing inefficient and inaccurate classification systems now in use which serve little useful purpose as means to protect sexually abused children.

In the Committee's judgment, the alternatives are clear: either the registers must become effective means of identifying child sexual abuse, or they must be scrapped in favour of more effective procedures to provide protection for these children. The current operation of the registers is both inefficient and ineffective and does little to assist and protect most children who are sexually abused.

## **Criminal Injuries Compensation Boards**

In each province and territory (except Prince Edward Island), there is an administrative board whose function is to award compensation to innocent victims of violent crime. In recent years, about one in 22 of the compensation awards made by these boards has been to victims of sexual assaults. These payments are generally small and in some jurisdictions enduring emotional and psychological harms are considered non-compensable.

The Committee believes that the existence and purpose of criminal injuries compensation boards must become generally better known to Canadians

and, specifically in relation to child sexual abuse, that the main helping services must be better informed about the services offered by these boards as a means of providing assistance for young victims and their families.

The Committee's research has clearly documented that the principal risks to sexually abused and assaulted children are the emotional and psychological harms which may be sustained, in some instances, having serious long-term consequences for these young victims. In relation to the enabling legislation concerning criminal injuries compensation boards in each jurisdiction, we believe these provisions should be amended to provide explicitly that the pain and suffering experienced by victims of sexual abuse and assaults be recognized as a basis for awarding compensation and that the federal-provincial cost-sharing arrangements should also be amended with respect to providing funding for compensation of victims of sexual offences in the *Criminal Code*.

**Recommendation 33**

**In co-operation with the Department of Justice, the Department of National Health and Welfare and Provincial and Territorial Governments, the Committee recommends that the Office of the Commissioner:**

- 1. In conjunction with Recommendation 2 relating to the undertaking of a national program of public education and health promotion, launch a vigorous campaign to inform citizens of the existence and purpose of Criminal Injuries Compensation Boards. This campaign should involve both the communications media and the police, hospitals, child welfare agencies, and other helping services.**
- 2. Review the funding of criminal injuries compensation programs and, where appropriate, recommend that the federal and provincial levels of support be increased in order to provide a more appropriate level of compensation for victims of sexual offences.**

**Recommendation 34**

**In relation to the enabling provincial legislation for criminal injuries compensation boards in each jurisdiction, the Committee recommends that this legislation be amended to provide explicitly for compensation for physical and emotional pain and suffering to the victim, in order to ensure a more appropriate level of compensation for victims of sexual offences.**

**Information Systems**

Much of the information reviewed by the Committee is based on the experience of sexually abused children known to various public services. In each of these surveys, more detailed information was obtained than that made available in the published statistics of these services. An obstacle inherent in

determining the officially reported occurrence of child sexual abuse in Canada is the absence of sufficiently precise information and reliance upon non-uniform systems of classification. Given even the lowest estimates of the extent of child sexual abuse in Canada, the problem is a matter of grave public concern. Until more reliable and comprehensive information is available on a continuing basis, it will remain a matter of conjecture how many Canadian children who are sexually assaulted are known to and served by public agencies.

The Committee believes that at the level of what is now known about these offences, it is crucial to understand why sexually assaulted children do or do not seek help, the nature of the harms done and the scope and adequacy of the services provided for their care and protection. Without such basic information being available, the public effort is effectively blindfolded concerning the dimensions of these problems and concerning the steps that it may be feasible to take in order to prevent and limit the occurrence of these acts.

## Official Crime Statistics

The *Uniform Crime Report Statistics* assembled by Statistics Canada from police forces across the country do not give information about the victims of crimes or their ages. The actual counting of criminal acts in these statistics varies for offences involving property and offences against the person; no specific sexual offences are listed with these crimes being grouped under a few broad categories. The omission of information about victims in these statistics precludes the specific identification of those sex offences that specify the elements of these offences in relation to the age, sex and relationships of blood, marriage and positions of authority or trust. Because these fundamental types of information are missing in official crime statistics, this source can only be used as a baseline for documenting broad trends. It cannot be used as a basis to review the operation of existing sexual offences in the *Criminal Code*, or as a means to assess the potential impact of new legislative amendments.

On the basis of the Committee's review, it appears that current practices followed by the *Homicide Statistics Program* in the classification of related incidents and the relationships between victims and suspects may substantially under-report sexual assault child homicides. There is insufficient specification defining precisely what related acts were committed, over what period of time, or by whom relative to persons whom children knew or who were responsible for them. No annually updated and centrally maintained source of information is available for Canada about whether the persons who committed sexually related child homicides were involved after their release in committing further sexual offences against children.

There is no uniform system of *Corrections Statistics* for Canada. Each jurisdiction (federal, provincial and territorial) maintains its own means of assembling and classifying information about victims and offenders. Several provinces do not have central computerized systems permitting an efficient updating of the information available. Except by means of a direct manual



search of the files of convicted offenders, there is no procedure available in Canada whereby an assessment can be made of: the number of convicted child sexual offenders; the sentences they received; their prior criminal records in relation to the ages and sexes of victims; and sexual recidivism against children.

The absence of fundamental information in the Homicide Statistics and Correctional Statistics Programs constitutes a glaring omission about issues that deeply concern Canadians. If such information were annually collected on a systematic basis, it would permit an evaluation of the effectiveness of different sentencing practices, the benefits that may be gained from the various types of treatment provided for prisoners, and the efficacy of the different types of prison settings (minimum to maximum security) in which prisoners are housed.

In its research, the Committee found that vital information about the victims of sexual offences and the offenders committing these crimes is available in the records upon which these statistics are based. However, the collection of this type of information is precluded by the statistical systems that are now in place. In the Committee's opinion, it is mandatory that existing official crime statistics systems be revised to provide basic information about the victims of sexual offences and offenders with the results being published annually.

### **Recommendation 35**

**The Committee recommends that the Office of the Commissioner in conjunction with federal and provincial departments (including the Department of Justice, Department of National Health and Welfare, Statistics Canada, Department of the Solicitor General, Correctional Service Canada and National Parole Board in co-operation with their provincial and territorial counterparts) and the Canadian Association of Chiefs of Police, establish an interagency body for the purpose of developing:**

- 1. Uniform System of Classification between existing systems of official crime statistics (Uniform Crime Report Statistics, Correctional Statistics, Homicide Statistics Program).**
- 2. Standard Core of Information with respect to sexual offences which as a minimum includes: age and sex of the victims; type of association (as defined by the *Criminal Code*) between victim and offender; injuries sustained by the victim; sexual offences committed as specified by the *Criminal Code* and in relation to specific sexual acts involved; and, the age and sex of the offender and the offender's prior criminal record.**
- 3. National Reporting System with respect to the Standard Core of Information with the results published annually.**
- 4. Biennial Review, in order to update and revise the National Reporting System.**

## Disease Classification System

Having a disease classification system that identifies with reasonable accuracy medically examined cases of suspected and/or confirmed sexual abuse is an essential component of the services required for the protection of victims of these offences. In the absence of such a system, it is not possible to determine the extent of these medically reported conditions and, of greater importance for the well-being of the child, to assess the physical injuries and emotional harms sustained and their long-term impact on the child's health.

The existing classification system for the identification of sexual behavioural and character disorders is inconsistent with respect to the inclusion of some categories, but the exclusion of other major types of sexual behaviour. In this regard, it is an anomaly that while certain types of sexual behaviour and disorders are identified, no specific reference is made to persons committing incest or sexual assaults. Most of the existing categories are loosely defined and do not permit a reasonably uniform and consistent identification of behaviours and disorders. In the Committee's view, most of these categories should be dropped and be replaced by a classification system which is inclusive with respect to the identification of the types of sexual acts for which persons may have a predisposition to commit and with respect to the acts committed. The main deficiency of the existing classification systems is that they do not permit the sufficient or complete identification of persons against whom sexual acts are committed and how they may be injured.

The Committee recognizes that a review of the *International Classification of Diseases* (Ninth Revision) is being undertaken by the World Health Organization. This review is scheduled to be completed before the end of the 1980s. The Committee believes that the Government of Canada should not postpone consideration of the classification scheme until the international review has been completed. There is no assurance that the international review will address the concerns identified by the Committee.

### Recommendation 36

**The Committee recommends that the Office of the Commissioner in consultation with the provinces, the Department of Justice, the Department of National Health and Welfare and Statistics Canada, appoint an expert advisory committee comprised of experts in nosology, paediatrics and the law to:**

1. Review the codes of the *International Classification of Diseases* (Ninth Revision) in order to determine how these do or do not permit the identification of diagnoses relating to persons, both children and adults, who have been sexually abused.
2. Develop a revised classification with respect to the identification of physical injuries and emotional harms associated with sexual assault.

3. Enlarge this system with respect to the identification of the events or persons associated with these assaults (e.g., incest), in relation to:
  - (i) the types of sexual acts committed;
  - (ii) the circumstances or events under which the acts were committed;
  - (iii) the type of association between the person committing the act and the patient; and
  - (iv) review and make recommendations with respect to the identification of sexual abuse within the framework of medical services provided to: hospital outpatients; and patients examined and treated by physicians in private medical practice.

### Recommendation 37

On the basis of the review and recommendations provided by the expert advisory committee, the Committee recommends further that the Office of the Commissioner in co-operation with the Government of Canada should:

1. Implement the recommended revisions with respect to the classification by Statistics Canada of hospital morbidity and death statistics.
2. Consult with the provinces to review means whereby the classification of medical services provided on an ambulatory basis can be revised to identify statistically persons who have been sexually assaulted and injured.
3. Make representation to the international nosological review committee of the World Health Organization with respect to effecting amendments along these lines to be contained in the Tenth Revision of the *International Classification of Diseases*.

## Classification of Sexually Transmitted Diseases

The *International Classification of Diseases* (Ninth Revision) identifies diseases numerically and by title, and groups these diseases into a number of broad types of conditions. One of these categories, Infective and Parasitic Diseases, lists those conditions that are generally recognized as being communicable or transmissible, and within this category, the numerical identification is given for sexually transmitted diseases.

A number of different codes may be used with respect to the different manifestations of syphilis and gonorrhea. From a perspective of prevention, emphasis is warranted on those diseases which can be transmitted between persons. With respect to nongonococcal urethritis, cervicitis and vaginitis, it is now



more feasible than it was a few years ago to make more accurate diagnoses in terms of the agents involved. For certain conditions which are believed to be more prevalent now than in the past (e.g., herpes, chlamydia, vaginitis), a more complete and detailed listing is required for the specific identification of these conditions. In addition, consideration is warranted in relation to the development of a consolidated and distinctive classificatory grouping that brings together all types of sexually transmitted diseases.

The Committee's recommendations concerning the modernization of existing classification systems pertaining to sexually transmitted diseases are given in Recommendation 16.

## Child Protection Services

In its review of the annual reports of provincial child protection services and in undertaking the collection of information in the National Child Protection Survey, the Committee found that the category 'child sexual abuse' was commonly used as an inclusive term which encompassed all forms of sexual offences committed against children and youths. This broad categorization is also used in provinces having central child abuse registers often without further specification in relation to the sexual acts committed.

As the Committee's findings indicate, the sexually abused children served by child protection workers range from those who have been victims of acts of exposure to those who have been raped. The existing classification systems preclude consideration of the gravity of the sexual acts committed, assessment of the harms sustained by victims of different sexual acts, or appraisal of which means of intervention may be more effective relative to the types of harms incurred.

The Committee believes that the more precise identification of the types of child sexual abuse known to child protection services would afford better protection for these children by means of more clearly specifying risks, indicating the scope of the assessments required, and providing a more effective basis upon which to determine the adoption of different intervention strategies.

### Recommendation 38

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of National Health and Welfare, Department of Justice and provincial and territorial child protection services review the classification of sexual offences against children and youths used by child protection services with a view to establishing a common core of information concerning: the age and sex of the victim; the sexual acts committed; the injuries sustained by the vic-**

**tim; the association between victim and offender; the age and sex of the offender; and the disposition of the case, among others.**

## Research

In its review of available Canadian research pertaining to the issues established by its Terms of Reference, the Committee found that most Canadian studies on sexual offences represented the work of single disciplines. This separation has led to distinctive, fragmented and unrelated bodies of research for police work, community associations, child protection services, school programs, medical services, the field of corrections and social science surveys, among others. While such research purports to deal with sexual offences, it is seldom accurately informed about many of the main social, medical and legal issues, even as these pertain to the ages and sexes of victims, the sexual acts committed, the injuries sustained or the types of association between victims and offenders. The manner in which much of this research has been conducted typically does not consider the salient dimensions of the sexual acts committed and, with respect to the sexual offences in the *Criminal Code*, precludes the use of the findings obtained as a basis upon which evaluation is feasible in relation to the operation of these laws, the impact of legislative amendments or of the efficacy of different intervention strategies.

In regard to the need for comprehensive, fact-finding research concerning all aspects of sexual offences committed against young children, youths and adults, the Committee reiterates concerns that have been raised by several earlier federal inquiries. Such research is warranted and is feasible to undertake. In the Committee's judgment, the research that has been undertaken has failed to provide sufficient or adequate documentation with respect to the important issues identified by these earlier inquiries.

The Committee unequivocally adheres to the principle of the right of scholarly and professional researchers to undertake research independent of intrusion by the state and that they should be able to publish findings freely, except with respect to honouring ethical research standards. This principle is not at issue.

In recent years, the Government of Canada has supported research on sexual offences by means of: direct research grants; contracts; block funding of services; federally established advisory bodies; and studies undertaken directly by federal departments. In the Committee's judgment, while the studies conducted by means of public funding may have served other purposes, their results have usually failed to provide a sufficient foundation upon which either to base the reform of the law or to mount the restructuring of needed services. In addition, it is clearly evident that a sizeable body of this research has been funded without benefit of sufficient and independent interdisciplinary review. As a result, the quality of much of the research work completed is wholly inadequate.

### **Recommendation 39**

With respect to strengthening the research dealing with sexual abuse and sexual offences against children and youths in the *Criminal Code*, the Committee recommends that:

1. The Office of the Commissioner be assigned responsibility to assess and make recommendations concerning research dealing with sexual abuse.
2. The scope of the research to be reviewed by the Office of the Commissioner include all research funded by the Government of Canada by means of: grants; contract; block funding; federal advisory bodies; and federal departments.
3. The Treasury Board be instructed not to approve funding for research dealing with these issues unless the general designs of the studies have been reviewed by the Office of the Commissioner.

The Committee has made no assessment of the funds assigned in recent years by the Government of Canada in support of research relating to offences in the *Criminal Code*. In light of the studies dealing solely with sexual offences, there is no doubt that this commitment has been substantial. With respect to research pertaining to the operation of the criminal law, the Committee believes that rigorous research review procedures should be adopted in relation to studies pertaining to sexual offences. The Committee believes further that this principle could be effectively applied in other areas of research involving the operation of the criminal law.

In undertaking its research on sexual offences against children and youths, the Committee identified a number of significant issues pertaining to the protection of the child or the management of offenders that warrant priority in the prospective funding of research studies. These issues include: injuries to sexually abused children; harms resulting from contracting sexually transmitted diseases; harms resulting from exposure to pornography; the widespread occurrence of acts of exposure; the treatment of convicted child sexual offenders; and the efficacy of sentence practices in relation to reducing sexual recidivism. The justification for further research in relation to each of these issues is specified in the Report.

### **Recommendation 40**

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of National Health and Welfare fund, directly or by other means, national research studies focussing on:

1. Injuries to Sexually Abused Children, focussing on: the efficiency of different clinical programs in providing protection and optimum management for these children; the nature of long-term harms sexually assaulted children experience; and how they can most effectively be prevented, anticipated, detected and treated. The Committee regards this as a pri-



ority area for research funding. Investigation should be undertaken in conjunction with major hospitals across Canada specializing in providing treatment for sexually abused children.

2. Sexually Transmitted Diseases Contracted by Children, focussing on: the types of diseases contracted by children and the long-term risks likely to be sustained. This research should be undertaken by the Laboratory Centre for Disease Control, Department of National Health and Welfare in conjunction with provincial sexually transmitted disease control programs.
3. Long-term Effects of Exposure to Children of Pornography, focussing on: the immediate and long-term effects of exposure to pornography, including associated sexual assaults, particularly where it does and where it does not have subsequent negative effects and the factors that distinguish these situations.
4. Acts of Exposure, focussing on: acts of exposure which constitute the largest single category of sexual offences committed against children and youths. Research on these acts should be undertaken in co-operation with the Canadian Association of Chiefs of Police in which:
  - (i) persons reported to have exposed themselves to children and youths would be identified;
  - (ii) a monitoring of any subsequently reported offences would be established;
  - (iii) an evaluation be undertaken of the outcomes and effectiveness of different management procedures and sentencing practices in relation to reducing recidivism; and
  - (iv) the classification of these acts in Uniform Crime Report Statistics be revised in order to permit the accurate identification of these acts on an ongoing basis.
5. Treatment of Convicted Child Sexual Offenders, focussing on: the needs and treatment of convicted child sexual offenders. This study should include an assessment of the social, physical and mental health needs of these offenders and of all aspects of the treatment provided for them and the various outcomes. Research on a national basis should be undertaken by the Correctional Service Canada and provincial and territorial correctional services.
6. Recidivism of Convicted Child Sexual Offenders, focussing on: the long-term effects of different sentencing decisions and management practices. Research should be undertaken by the Department of Justice in conjunction with Correctional Service Canada and provincial and territorial correctional services.

## Juvenile Prostitution

The ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is unmistakable from the Committee's research findings. These youths are the cast-offs of Canadian society. Many are early

drop-outs from school and have run away from home at an early age. About two in five of these youths had previously been found delinquent before a juvenile court, and while few had been charged or convicted of soliciting, a substantial proportion had been charged with other offences.

The Committee's findings leave no doubt that for many of these youths, their work as prostitutes introduces them to a criminal way of life in which they become progressively more entangled. They also face considerable risks of contracting serious diseases, of being severely physically injured and of being harshly exploited by pimps.

While most of these youths have at one time been in contact with social services or enforcement agencies, except for seeking assistance such as medical care which they deem essential to continuing to their work as prostitutes, few seek out other helping services. The programs which might assist them are largely mistrusted, regarded as useless or are ignored.

While the Committee is under no illusion that merely amending the law is an adequate or realistic response to juvenile prostitution, it does consider that the law has an important role to play in deterring and punishing those who sexually exploit young persons in this manner and in proclaiming the patent unacceptability of "sex for pay" where young persons are concerned.

## Education for Prevention

Education is potentially the most effective tool for stemming the spread of juvenile prostitution. The Committee's findings leave no doubt about the emotional and physical harms, the risks and the privations associated with street life. The findings constitute a clear warning to any youth who is considering either running away or turning to prostitution.

In its Second Recommendation, the Committee calls for a national program of public education and health promotion as an essential means of affording better protection for sexually abused children. We also believe that there is an urgent need for this national program to focus upon the risks — physical, health, emotional and social — involved for youths who become prostitutes. It is essential that both parents or guardians and youths be fully informed about the actual conditions and risks associated with the street life of young prostitutes.

### **Recommendation 41**

**In conjunction with the national program of public education and health promotion specified in Recommendation 2, the Committee further recommends that special educational programs be developed drawing upon the findings of this Report documenting the conditions and risks associated with juvenile prostitution, and that these special educational programs be made available to parent-teacher associations and to schools, and by means of educational television.**

## Social Service Initiatives

There is no doubt that new and innovative programs directed primarily at those youths who have not yet become fully involved in street life must be developed and that these services must be securely and adequately funded. There are programs which have been tried that can form the basis for the development of services focussing upon the special needs of children and of those youths who are still experimenting with street life and who may still be amenable to assistance of a rehabilitative nature.

It is clear that no attempt to rehabilitate young prostitutes is likely to succeed unless it focusses attention on the need of these youths to alter their attitudes toward themselves and their way of living. Especially tailored helping programs are required having services designed to enhance the self-esteem and self-confidence of young prostitutes by imparting to them job or trade-related skills as well as conventional "life skills". Such programs, if successful, would also make it more financially feasible for these youths to get off the street. Programs having these objectives are vital prerequisites for the kind of action that is required to assist juvenile prostitutes to start a new life, one in which they have a perception of themselves as persons capable of living and working in a manner that is personally fulfilling, socially accepted and free of unacceptable risks to their health and safety.

The Committee's findings indicate that existing social services are ineffective in reaching many of these youths or in affording them adequate protection and assistance. In this respect, there can be no doubt in the Committee's judgment that special programs must be initiated and sufficiently funded to meet their needs. Despite the difficulties involved, the Committee believes that government at all levels has the unmistakable obligation to take positive steps in order to accomplish these objectives.

### **Recommendation 42**

**The Committee recommends that Provincial Child Protection Services develop special programs geared to serve the needs of young prostitutes and to identify the early warning signs of troubled home conditions warranting the provision of special services.**

### **Recommendation 43**

**The Committee recommends that the Office of the Commissioner in conjunction with other branches of the Government of Canada establish support for special multi-disciplinary demonstration programs (child protection, police, education, medical and youth job training services) for five years (renewable) designed to reach and serve the needs of these youths, focussing upon: affording immediate protection; counselling; and education and job training.**



## Strengthening Enforcement Services

In its meetings with senior police officers and on the basis of its research findings, the Committee learned of the difficulties entailed in laying charges against the customers of young prostitutes and the investigation and charging of pimps with whom these young prostitutes may associate. There is no doubt that existing legal provisions do not accord with the realities of juvenile prostitution and that the criminal law must be substantially amended to provide the nation's police forces with the necessary legal means to enable them to control and reduce the sexual exploitation of youths by means of prostitution.

In addition to amending the criminal law, a matter dealt with by the Committee's subsequent recommendations, it is evident that in light of their other enforcement responsibilities, most Canadian police forces have insufficient manpower to assign officers to the lengthy task of assembling the evidence requisite for the laying of charges against pimps. While such investigations are demonstrably feasible, each may entail several months of police investigation.

For these undertakings to be successful, it is essential to have police officers who are especially trained and experienced in regard to these investigations and who are given sufficient time to enable them to undertake adequately these assignments. In addition to the reform of the prostitution-related offences, the Committee believes that enforcement services must be considerably strengthened in order to permit them to succeed in laying charges against clients and pimps who exploit juvenile prostitutes.

### **Recommendation 44**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of the Solicitor General establish with the provinces a special federal-provincial cost-sharing program to provide specific support to municipalities enabling them to establish special police force units, having primary responsibilities for:**

- 1. Investigation and laying of charges against the clients of young prostitutes.**
- 2. Investigation and charging of pimps working with young prostitutes.**

## Soliciting for the Purpose of Prostitution

The amelioration of the tragic plight of juvenile prostitutes lies, in the Committee's opinion, chiefly in the implementation of social rather than legal initiatives. We believe that young prostitutes can be helped by more effective social intervention and by the development of programs aimed at reintegrating them into the mainstream of society. However, such social initiatives are most frequently rendered useless because they are not sought out by these youths and because viable means of intervention are currently lacking.

There are no effective means either in federal or provincial legislation of holding these children and youths. There are no effective means of bringing these children and youths into situations where they can receive guidance. There are no effective means of stopping the demonstrated harms that these children and youths are bringing upon themselves.

For these reasons, the Committee believes that the implementation of criminal sanctions against these children and youths must be made a legal possibility by creating an offence in order that social intervention can take place.

In reaching this conclusion, and reflecting divided opinions in the field, there was strong disagreement by some Members of the Committee that a criminal sanction against juvenile prostitutes was either desirable or likely to be effective, and indeed, a concern that such a prohibition would detract from the primary emphases upon prevention, early identification and early intervention.

In recognizing these important concerns, there is no desire on the part of the Committee to affix a criminal label to any juvenile prostitute. The Committee concluded, however, that in order to bring these children and youths into situations where they can receive guidance and assistance, it is first necessary to hold them and the only effective means of doing this is through the criminal process. Accordingly, the Committee reluctantly concludes that it is necessary to have a specific criminal sanction prohibiting children and youths engaging in prostitution. This sanction is a complementary prohibition to that recommended by the Committee against the customers of juvenile prostitutes. Together, these sanctions would constitute a clear legislative commitment that juvenile prostitution has no place in Canadian society.

## **Recommendation 45**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every young person who offers, provides, attempts or agrees to offer or provide for money or other consideration to engage in a sexual act with another person is guilty of a summary conviction offence.**
- 2. For the purpose of this section, “young person” means a person who is under 18 years of age.**

The findings from the National Juvenile Prostitution Survey indicate that the current offence of soliciting for the purpose of prostitution in section 195.1 of the *Criminal Code* is not effective either in deterring young prostitutes from working on the streets, or in deterring tricks from seeking out their services. Of the young prostitutes interviewed, only one in 10 had ever been convicted of this offence. The reason is clear: juvenile prostitutes do not find it necessary to be “pressing or persistent” in order to secure clients for their services. Most of

the prostitutes interviewed said that they would only take the risk of actively propositioning prospective clients when they had yet to attain their daily quota.

From the standpoint of criminal policy, the Committee's findings concerning the public nuisance aspect of prostitution (to which section 195.1 of the *Criminal Code* is primarily addressed) are particularly relevant. Slightly less than half of the young prostitutes interviewed stated that, at one time or another, they had approached and propositioned someone who was not seeking the services of a prostitute. Even more significant are the Committee's findings concerning the solicitation by tricks of women who were not prostitutes. Almost two-thirds of the juvenile prostitutes interviewed stated that they had witnessed such an occurrence. The reported reactions of the women thus importuned ranged from insult and disgust, shock and anxiety, to fear, anger and, in a few instances, minor acts of violence. Sometimes the tricks verbally abused these women, persisted in their solicitations, and followed and grabbed at them.

The Committee's findings indicate that the clients of prostitutes pose at least an equal if not a greater public nuisance than do the prostitutes themselves. While many tricks attempt to solicit the services of young prostitutes from within the confines of a motor vehicle, the law, as presently constituted, does not take this fact into account. In light of its research findings, the Committee endorses the legislative proposals of the *Criminal Law Reform Act*, 1984 (Bill C-19) which would make the "soliciting" offence in section 195.1 applicable to tricks as well as to prostitutes and would widen the definition of "public place" to include a motor vehicle located in or on a public place.

In the Committee's judgment, a separate criminal offence is needed to deter persons who seek out and use young prostitutes. As noted earlier, section 195.1 of the *Criminal Code* requires that an accused be "pressing or persistent" in his or her solicitations and that the solicitation occur in a "public place". While these requirements are relevant to the public nuisance aspect of prostitution, they are clearly irrelevant to society's more compelling interest in deterring and punishing the exploitation of young persons by way of prostitution. Furthermore, the substantial harms incurred by young persons who engage in prostitution are independent of whether a prospective customer actively solicits their services in a public or private place. The Committee does not consider that adults who exploit the sexual vulnerability of young persons should be considered any less culpable because they agree to pay for the sexual act with a young person than if they were to threaten or coerce sexually a child or youth without payment.

The tragic consequences of a life of prostitution for young persons are extensively documented in this Report. These serious harms justify the imposition of a criminal sanction against the customers of young prostitutes. Depending on the age of the young person and the nature of the sexual act engaged in, the customer of a young prostitute could also be charged with one of the sexual offences against children in the *Criminal Code*.



## **Recommendation 46**

**The Committee recommends that the *Criminal Code* be amended to provide for a separate offence in the following terms:**

- 1. Every one who offers, provides, attempts or agrees to offer or provide, money or other consideration to a young person for the purpose of engaging in a sexual act with, against, or upon such young person, is guilty of an indictable offence and is liable to imprisonment for two years.**
- 2. For the purpose of this section, “young person” means a person who is under 18 years of age.**
- 3. It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

## **Publicizing Clients’ Names**

In general, the law does not prohibit the public identification of persons convicted of crime, including those who are convicted of soliciting the services of young prostitutes. On the basis of its review of reports published for one year in 34 newspapers across Canada, the Committee found that in practice while the names of persons convicted of other crimes, such as robbery or theft, were given prominence in the media, this was seldom done in relation to persons convicted of soliciting prostitutes.

In addition to the imposition of criminal sanctions against customers of juvenile prostitutes, the Committee believes that social sanctions must be invoked as a powerful means of deterring persons who sexually exploit young persons by means of prostitution. The information given to the Committee by these youths leaves no doubt that most of their customers would not wish to have their identities known publicly as persons who had used the services of juvenile prostitutes. The prospect of public exposure and humiliation and the resultant loss of reputation, family, friends and even, in some instances, of business, would suffice in many instances to dissuade these persons from availing themselves of the sexual services of young prostitutes.

The Committee believes that the publishing of the names of persons convicted of soliciting young prostitutes would serve as a contributory deterrent to persons inclined to seek the sexual services of juvenile prostitutes.

## **Recommendation 47**

**The Committee recommends that the Office of the Commissioner in conjunction with the national and provincial associations for the public media mount a program of giving prominent publicity to the names of persons convicted of soliciting juvenile prostitutes who are under age 18.**

## Procuring and Living on the Avails of Prostitution

The role played by pimps in introducing and coercing young females into a life of prostitution, and of locking them into this life by way of drugs, violence, and threats of violence, is clearly documented in the Committee's research. In the Committee's opinion, the parasitic relationship between pimps and the young prostitutes in their employ is an intolerable form of child abuse. It warrants the application of effective legal sanctions against these exploiters of the young. The pimp cultivates and exploits the prostitute's vulnerabilities — her low self-esteem, her loneliness on the street, her need for love and protection. The oppressive social environment in which young prostitutes are compelled to work, and which the pimp actively engenders, robs these young persons of their human dignity and of opportunities for pursuing a more healthful and constructive way of life. In the Committee's view, the response of the criminal law to this egregious exploitation of the young must be certain and severe.

The Committee's research has unearthed a number of social facts about juvenile prostitution which can serve as a basis for strengthening the protection afforded to young persons by the offences of "procuring" and "living on the avails of prostitution" in section 195 of the *Criminal Code*. Although some of the procuring offences in section 195 apply only to the procuring of a person to have illicit sexual intercourse with another person, the Committee's research reveals that the act of sexual intercourse is only one of many sexual acts which young prostitutes are procured to perform. The Committee recommends that section 195 of the *Criminal Code* be amended accordingly.

Further, in light of the Committee's finding that some pimps have only one prostitute working for them (and, in many cases, living with them), the Committee recommends that the presumption in section 195(2) be widened to provide that evidence that a person lives with or is habitually in the company of a prostitute or prostitutes is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution. These reforms would materially strengthen the impact of the *Criminal Code* in this context and would better correspond to the modern realities of juvenile prostitution in Canada.

In the Committee's judgment, the limitation period for prosecution in section 195(4) of the *Criminal Code*, and the corroboration requirement in section 195(3) relating to the offences of "procuring", are neither necessary nor appropriate in the modern context of juvenile prostitution. The Committee sees no reason for requiring a prosecution under section 195 to be commenced within one year after the time the offence is alleged to have been committed. Limitation periods for the prosecution of indictable offences are highly exceptional in Canadian criminal law: the importance of society's interest in deterring and punishing this blatant exploitation of young persons argues strongly against any procedural limitation of this kind. In reference to section 195(3), the Committee adheres to its general principle that the credibility of a young victim of sexual abuse should be a matter of weight to be decided by the trier of fact, not a matter of presumed unreliability.



With respect to the sentences that should be available against individuals who procure young persons to engage in sexual acts with another person, or who live on the avails of the prostitution of young persons, the Committee considers that deterrence and denunciation must be the paramount sentencing considerations. The cold-blooded nature of the pimp's conduct, and its often life-destroying implications for the young prostitutes who do his bidding, should entail a mandatory sentence of imprisonment. The Committee can conceive of no factors which could possibly mitigate the severity of this form of exploitation of the young.

The conduct of the pimp towards young prostitutes is premeditated, persistent and often brutal; the consequences of this relationship for young prostitutes are invariably oppressive and dehumanizing. Parliament has seen fit to prescribe severe sanctions against persons convicted of grave sexual offences. In the Committee's judgment, it can scarcely be argued that the procurers of young prostitutes pose any less of a threat to the well-being of Canadian society or that the importance of deterring and denouncing the sexual procurement of young persons is any less compelling. The Committee therefore recommends that a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, be prescribed for persons convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.

#### **Recommendation 48**

##### **The Committee recommends:**

1. That the phrase "illicit sexual intercourse" in section 195(1)(a), section 195(1)(b), and section 195(1)(i) of the *Criminal Code* be amended to read, "illicit sexual intercourse or any other sexual act".
2. That the phrase "habitually in the company of prostitutes" in section 195(2) of the *Criminal Code* be amended to read, "habitually in the company of a prostitute or prostitutes".
3. That section 195(3) of the *Criminal Code* be repealed.
4. That section 195(4) of the *Criminal Code* be repealed.
5. That section 195(1) of the *Criminal Code* be amended to provide for a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, for an accused who is convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.

## **Reform of the Law Relating to Child Pornography and Access by Children to Pornographic Materials**

The Committee's Terms of Reference ask it to determine the incidence and prevalence of sexual exploitation of children by way of pornography and to examine the question of access by children to pornographic materials. As with



several other matters within the Committee's mandate, the legal regulation of these two areas has both federal and provincial aspects. The making, distribution, sale and importation of child pornography are matters which fall primarily within the legislative competence of Parliament. The question of access by children to pornographic materials is a matter which, to date, has been regulated through the operation of a small number of municipal by-laws authorized at the provincial level.

The federal *Criminal Code* does not contain a specific offence relating to making, distribution or sale of child pornography. This behaviour is, however, indirectly proscribed by the various sexual offences in the *Criminal Code* and by the *Criminal Code* provisions relating to obscene publications. The *Customs Tariff* prohibits the importation into Canada of books or visual representations of an "immoral or indecent" character and the *Customs Act* authorizes the seizure and forfeiture of any such materials that are unlawfully imported. These statutory powers are supplemented by provisions in the *Canada Post Corporation Act* pertaining to the use of the mails. In the area of electronic broadcasting, the Canadian Radio-television and Telecommunications Commission (C.R.T.C.) has been invested by Parliament with plenary regulatory authority over radio, television, cable television and pay television, and this includes the authority to establish limits on the kinds of sexually explicit representations that may legitimately be broadcast.

The provinces and territories have a complementary regulatory role in this context. The use of a child by his or her parent or guardian in the making of a pornographic depiction would almost certainly render the child "in need of protection" under the child welfare laws of each province and territory. With respect to the access by children and youths to pornographic materials, the provinces may regulate, by way of classification and other means, the public exhibition of films. A small number of municipalities have also enacted by-laws regulating the accessibility to children of pornographic materials in retail outlets, under provincial enabling legislation.

## The Making, Distribution, Sale and Importation of Child Pornography

Child pornography is a direct and palpable product of child sexual abuse. It comes into existence, and can only come into existence, through the base and coldly premeditated exploitation of a young person's sexual vulnerability. The justification for stringent legal regulation of child pornography is the state's transcendent interest in protecting and fostering the well-being of its children and in punishing and deterring criminal conduct which is inimical to their well-being.

In the Committee's judgment, the need for explicit and severe legal sanctions against persons involved in the making, distribution, sale or importation of child pornography is compelling for several reasons.

First, child pornography is produced directly through the sexual abuse of young persons. It is a manifestation of that abuse which is sufficiently distinct and unacceptable to warrant separate treatment by the criminal law.

Second, child pornography constitutes a permanent record of a child's sexual exploitation and the harm and humiliation to the child are exacerbated by the circulation, distribution or sale of such materials.

Third, materials which depict children engaged in sexual conduct are often solicited by adults who use the materials to persuade other children to engage in similar conduct or who are themselves child molesters. The Committee's findings in this regard bear out this fact. In particular, these findings buttress the argument for enacting express legal sanctions against the importation and possession of child pornography.

Fourth, the distribution network for child pornography must be shut down if the production of such materials, which itself requires the sexual exploitation of children, is to be effectively controlled. Legal sanctions directed at each link of the chain of distribution would help to curtail conduct which compounds the original crime of making child pornography and which exacerbates the harm and humiliation experienced by the young participants.

Fifth, the importation, circulation, distribution or sale of child pornography provides economic and other motives for the continued production of such materials and, in effect, guarantees additional child sexual abuse to that end. In the Committee's judgment, the only effective way to curtail the production of child pornography, and to eradicate it from the Canadian market entirely, is to attach criminal consequences to the conduct of each participant in the process, from the importer or maker of child pornography to the ultimate consumer of child pornography, and to all intermediate parties who are culpable.

Sixth, the existing *Criminal Code* framework relating to obscene publications is inadequate to deal with the special circumstances attending the making and distribution of child pornography. The general definition of obscenity does not reflect the state's particular and more compelling interest in prosecuting and punishing those who promote the sexual abuse of children in this manner. The definition of "obscene publication" in section 159(8) of the *Criminal Code* pertains to the overall content of the publication, rather than to the circumstances of its production. *In reference to child pornography, it is the circumstances of its production, namely, the sexual exploitation of young persons, which is a fundamental basis for proscription.* The availability of child pornography also constitutes a message to the consumers of this matter that children are available for these purposes. Where a young person has been used in the making of pornographic visual material, it is of course irrelevant whether some view the material as having literary, artistic or aesthetic value. Plainly, the offences relating to obscene publications are based on different policy considerations than those which operate in the context of child pornography.



The Committee had no difficulty in agreeing that legal sanctions at each link from production through importation, distribution and sale were required to increase the protection to children exploited in the preparation and depictions of pornographic activities. There was sharp disagreement, however, over whether this should extend to simple possession of such material.

Those Members who favoured this, argued it was the logical extension of the chain of legal sanctions. Those Members who opposed it reflected a major concern about intrusion into the privacy of the home, regressive moves towards more control of personal choice and life-style and an extension of censorship principles. The Committee's review of these issues reflects the divided opinions held by various groups in Canadian society.

The Committee's recommendations concerning child pornography are restricted to *visual* pornographic depictions of persons under the age of 18. Pedophilic literature and visual pornographic depictions involving persons 18 or older would be subject to the general obscenity provisions in sections 159 and 160 of the *Criminal Code*. In the Committee's judgment, a special child pornography prohibition attacks, not the legitimate expression of ideas, but rather a form of criminal conduct that is clearly inimical to the well-being of young children and youths.

#### **Recommendation 49**

##### **1. The Committee recommends that the *Criminal Code* be amended to include the following provisions:**

###### **(i) Every one who:**

**(a) uses, or who induces, incites, coerces, or agrees to use a person under 18 years of age to participate in any explicit sexual conduct for the purpose of producing, by any means, a visual representation of such conduct;**

**(b) participates in the production of a visual representation of a person under 18 years of age participating in explicit sexual conduct;**

**(c) makes, prints, reproduces, publishes, distributes, circulates, or has in his or her possession for the purposes of publication, distribution, or circulation a visual representation of a person under 18 years of age participating in explicit sexual conduct; or**

**(d) sells, offers to sell, receives for sale, advertises, exposes to public view, or has in his or her possession for the purpose of sale a visual representation of a person under 18 years of age participating in explicit sexual conduct,**

**is guilty of an indictable offence and is liable to imprisonment for 10 years.**

###### **(ii) Every one who knowingly, without lawful justification or excuse, has in his or her possession a visual representation of a person under 18**



years of age participating in explicit sexual conduct, is guilty of an indictable offence punishable on summary conviction.

(iii) For the purpose of sections (i) and (ii) above,

(a) a person who at any material time appears to be under 18 years of age shall, in the absence of evidence to the contrary, be deemed to be under 18 years of age;

(b) “explicit sexual conduct” includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals occurs or is depicted;

(c) “visual representation” includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

(iv) In any proceeding under this Part, where a court is satisfied that a matter or thing is a visual representation referred to in section (i) or (ii), the court shall order the matter or thing and any copies thereof to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

2. The Committee recommends that the relevant definitional, seizure and forfeiture provisions in the *Customs Tariff*, *Customs Act*, and *Canada Post Corporation Act* be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
3. The Committee recommends that the *Broadcasting Act*, and regulations made thereunder, be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
4. The Committee recommends that the provincial Departments of the Attorney General, in conjunction with the federal Department of Justice, develop criteria for film and video classification which conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.

## Strengthening Federal Enforcement Services

In addition to amendments to the law, it is evident from the Committee's research that there is also a need to restructure and strengthen the capacity of federal enforcement services to detect and seize the child pornography that is brought illegally into Canada. A central computerized information system has

been established by Revenue Canada Customs and Excise Headquarters for the purpose of storing information on seizures of pornographic and obscene matter. The Committee found that information concerning only about two in five seizures made at customs' entry points had been reported to this central registry. In order to obtain information with respect to seizures that are not entered on the central registry, it would be necessary to undertake a direct manual search of the seized records retained at the Regional Offices of Revenue Canada.

Since the central computerized system does not provide documentation of all seizures, it fails to serve effectively as a means of identifying persons who may be habitual smugglers of child pornography. This failure is significant: the Committee's findings indicate that persons who sexually molest children are also likely to purchase and possess child pornography and to seek to involve children and youths in the making of visual representations of explicit sexual conduct.

#### **Recommendation 50**

**The Committee recommends that, in conjunction with the Office of the Commissioner, the federal Department of Justice in consultation with Revenue Canada and the Department of the Solicitor General review the operation of the central registry of Customs seizures with a view to assuring its efficient operation as a means of identifying the importers of child pornography.**

On the basis of information assembled by the Committee, it is evident that customer mailing lists of distributors of child pornography which are routinely seized by foreign enforcement agencies is an even more effective method of identifying persons who illegally import child pornography. Seized mailing lists instantly identify the persons whose use of the postal system may warrant official scrutiny.

The Committee recognizes that prudence and discretion must be exercised by law enforcement officers before they undertake to search a citizen's home or place of business. Legal safeguards have been enacted in federal statutes and in the *Canadian Charter of Rights and Freedoms* to prevent abuse of the authority of the police to conduct searches and seizures. In the Committee's judgment, however, an active search and seizure policy is warranted where it will serve to identify the consumers of illegally imported child pornography.

Where foreign police agencies provide the R.C.M.P. with subscriber mailing lists involving child pornography, the circumstances exist to justify thorough investigations, including searches and seizures. Were the R.C.M.P. to make it known publicly that it was actively seeking the co-operation of foreign enforcement agencies in obtaining mailing lists, and that it intended to conduct a rigorous investigation of any suspected case of unlawful postal importation of child pornography so discovered, it is likely that the prospect of being dis-

covered, of having one's residence searched and of facing prosecution and conviction would dissuade a significant number of persons from soliciting child pornography through the mail.

### **Recommendation 51**

**The Committee recommends that the federal Department of Justice in conjunction with the Department of the Solicitor General, Revenue Canada and the Office of the Commissioner:**

- 1. Announce publicly, including notices posted at entry points and a statement contained in Customs Declaration Forms, that the R.C.M.P. is actively seeking the co-operation of foreign enforcement agencies to obtain information concerning the producers and distributors of child pornography, and that the R.C.M.P. intends to conduct a rigorous investigation of any suspected case of unlawful importation of child pornography.**
- 2. Instruct the R.C.M.P. to seek out, where possible, the mailing lists of all major commercial producers and distributors of child pornography, and to undertake thorough investigations on the basis of the information so provided.**

## **Access by Children to Pornographic Materials**

The Committee's research indicates that the distribution and sale of pornography is a thriving and growing enterprise; moreover, it is an enterprise supported by large numbers of Canadians. Hundreds of thousands of Canadians have viewed or purchased pornographic materials. There is no evidence that this trend will abate. On the contrary, the Committee's research findings strongly suggest that the consumption and sale of these materials will increase in the future. But despite the widespread purchase of pornography, there is also an urgent public concern about the open display of these materials and about their ready accessibility to young persons. From its National Population Survey, the Committee found that there is considerable agreement in Canada that an age limit should be established in relation to the purchase of pornography and that pornographic materials should not be displayed in a manner which makes them accessible to children.

In reference to the operation of municipal by-laws designed to regulate the sale and accessibility of pornography to children, the Committee found that relatively few municipalities had enacted by-laws of this kind. Further, some of these by-laws have been held to be legally invalid due to their lack of specificity in identifying the kinds of pornography sought to be regulated.

In the Committee's judgment, effective regulation of the access by children to pornographic materials can be achieved only through legislation which is national in scope, enacted under Parliament's constitutional authority to enact laws in relation to criminal law,<sup>35</sup> and for the "peace, order, and good



government of Canada.”<sup>36</sup> Federal statutes regulating the sale of tobacco products to minors<sup>37</sup> and the sale of products hazardous to children (for example, chemically-based products which may be used for “glue-sniffing”)<sup>38</sup> have been upheld as valid exercises of the federal criminal law power, as have the provisions of the *Juvenile Delinquents Act*.<sup>39</sup>

In the Committee’s judgment, the documented national dimensions of the problem of access by children to pornographic materials necessitate the enactment of a federal prohibition “to deal with a genuinely new problem which did not exist at the time of Confederation and clearly cannot be put in the [provincial legislative] class of ‘Matters of a merely local or private nature’”<sup>40</sup>. In light of the strong concerns expressed by Canadians about the ready access by children to pornographic materials, the Committee considers that provisions should be enacted to prohibit the accessibility and sale of pornography to young persons.

## **Recommendation 52**

**The Committee recommends that the *Criminal Code* be amended to prohibit the accessibility and sale of visual pornographic materials to young persons under 16 years of age. The amendments should incorporate the following elements:**

- 1. A detailed specification of the range of visual pornographic materials sought to be prohibited, in terms both of content and visual medium. Magazines, video-cassettes and “sex aids” should be expressly included.**
- 2. Visual pornographic materials which are offered for sale in commercial outlets must be covered and sealed.**
- 3. No person shall knowingly sell, display or offer to sell such visual pornographic materials to anyone under 16 years of age.**

For the purpose of sections (1), (2) and (3) above, “visual pornographic materials” includes any materials in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted.

- 4. Every one who contravenes these provisions is guilty of an offence punishable on summary conviction.**

## References

### Chapter 3: Recommendations

- <sup>1</sup> Canada. *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: King's Printer, 1938.
- <sup>2</sup> Canada. Department of Justice. *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada*. Ottawa: Queen's Printer, 1956.
- <sup>3</sup> Canada. *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*, Ottawa: Queen's Printer, 1958.
- <sup>4</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer, 1969.
- <sup>5</sup> Law Reform Commission of Canada, *Report on Sexual Offences* (Ottawa: Supply and Services Canada, 1978) at 7.
- <sup>6</sup> See Packer, *Criminal Code Revision* (1973), 23 U.T.L.J. 1; and Hogan, "On Modernising the Law of Sexual Offences" in Glazebrook, ed., *Reshaping the Criminal Law* (London: Stevens and Sons, 1978) at 174. For a more general perspective, see Packer, *The Limits of The Criminal Sanction* (Stanford: Stanford University Press, 1968) at 261-69 and 296-331.
- <sup>7</sup> Cf. Wechsler, *Revision and Codification of Penal Law in The United States* (1983), 7 Dalhousie L.J. 219; and Hall, "The Three Fundamental Aspects of Criminal Law" in Mueller, ed., *Essays in Criminal Science* (London: Sweet and Maxwell, 1961) at 159.
- <sup>8</sup> Canada. Department of Justice. *Sentencing Practices and Trends in Canada*. Ottawa, 1983. Volume 1, pp. 57-58.
- <sup>9</sup> *Cr. Code*, s. 146 (1). Section 140 of the *Code* provides that, "where an accused is charged with an offence under section 146 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.
- <sup>10</sup> *Cr. Code*, ss. 146(2) and 146(3).
- <sup>11</sup> See Law Reform Commission of Canada, *Working Paper 22: Sexual Offences* (Ottawa: Supply and Services Canada, 1978) at 26-27.
- <sup>12</sup> Policy Advisory Committee on Sexual Offences, *Report on the Age of Consent in relation to Sexual Offences* (London: H.M.S.O., 1981) at 9.
- <sup>13</sup> *Ibid.*, at 5. For the English experience concerning sexual offences involving young persons who are close in age, see generally Walmsley and White, *Sexual Offences, Consent and Sentencing, Home Office Research Study No. 54* (London: H.M.S.O., 1979).
- <sup>14</sup> The Law Reform Commission of Canada has recommended that the incest offence be abolished: *Report on Sexual Offences*, *supra*, note 5 at 25-29; and *Working Paper 22: Sexual Offences*, *supra*, note 11 at 30-34.
- <sup>15</sup> Criminal Law Revision Committee, *Working Paper on Sexual Offences* (London: H.M.S.O., 1980) at 42. The Scottish Law Commission has also advocated the retention of incest as a specific offence with no minimum age: *Memorandum No. 44, The Law of Incest in Scotland*, paragraphs 6.7-6.11.
- <sup>16</sup> The Law Reform Commission of Canada has recommended that the incest offence be abolished: *Report on Sexual Offences*, *supra*, note 5 at 25-29; and *Working Paper 22: Sexual Offences*, *supra*, note 11 at 30-34.
- <sup>17</sup> Law Reform Commission of Canada, *Report on Sexual Offences*, *supra*, note 5 at 26.
- <sup>18</sup> Cf. Criminal Law Revision Committee, *supra*, note 15 at 46.

- <sup>19</sup> The Committee disagrees with the conclusions of the Law Reform Commission of Canada in this respect: see the Commission's *Report on Sexual Offences*, *supra*, note 5 at 30; and its *Working Paper 22: Sexual Offences*, *supra*, note 11 at 34-36.
- <sup>20</sup> For example, in *R. v. Bourne* (1952), 36 Cr. App. R. 125 (C.C.A.), the accused compelled his wife to have sexual connection with a dog.
- <sup>21</sup> *Cr. Code*, s. 155.
- <sup>22</sup> See *R. v. Baney*, [1972] 2 O.R. 34 (C.A.); and *R. v. MacCallum*, [1970] 2 C.C.C. 366 (P.E.I.S.C.). This holding with respect to the former offences of "indecent assault" would also apply, by parity of reasoning, to the "sexual assault" offences in sections 246.1, 246.2, and 246.3 of the *Cr. Code*.
- <sup>23</sup> The Committee's proposal is in similar terms to s. 1(1) of the English *Indecency With Children Act 1960*, 8 and 9 Eliz. 2, c. 33, which was enacted in order to remedy a similar problem in the English criminal law of sexual offences.
- <sup>24</sup> See Nadin-Davis, *Making a Silk Purse? Sentencing: The "New" Sexual Offences* (1983), 32 C.R. (3d) 28, especially at 43.
- <sup>25</sup> Law Reform Commission of Canada, *The General Part: Liability and Defences. Working Paper 29* (Ottawa: Supply and Services Canada, 1982). Appendix A: "Consent", at 137.
- <sup>26</sup> Stephen, *A Digest of the Criminal Law (Crimes and Punishments)* (London: Macmillan, 1877). The provisions were articles 203-209. One of these provisions, article 205, dealt with the situation where a person is incapable of giving consent, in this case consent to a surgical operation. Unfortunately, the Royal Commission on the 1879 English *Draft Code* (see note 29, *infra*), of which Stephen was a member, deleted the reference to consent, so that what had been article 205 subsequently appeared in the *Draft Code* and in our *Criminal Code* without any mention of consent (see *infra*, notes 28 and 33). As a result of this deletion and the decision not to include article 204 of the *Digest* (which provided that every one has a right to consent to a surgical operation) in the *Draft Code*, the application of the *Criminal Code* section has until recently been misunderstood. For the history and interpretation of the section, see Starkman, *A Defence to Criminal Responsibility for Performing Surgical Operations: Section 45 of the Criminal Code* (1981) 26 McGill Law Journal 1048, and the same author's *Sterilization of the Mentally Retarded Adult: the Eve Case* (1981) 26 McGill Law Journal 931, at 935-937.
- <sup>27</sup> *Supra*, note 25 at 137: "[I]t is not something which the defendant has to prove". See also Glanville Williams, *Criminal Law: The General Part* (2nd ed. London: Stevens, 1961) at 909-910 where, however, the author is discussing the meaning of "defence" in the context of the burden of proof.
- <sup>28</sup> Article 205 (surgical operation on person incapable of giving consent: *Draft Code*, section 67), and article 207 (no right to consent to have death inflicted upon oneself: *Draft Code*, section 69). Stephen, *supra*, note 26, 4<sup>th</sup> ed. (1887) at 148, note 2, and 149, note 1 states that the two consent provisions from the *Digest* were included in the *Draft Code*.
- <sup>29</sup> *Report of the Royal Commission Appointed to Consider the Law Relating to Indictable Offences: With an Appendix Containing a Draft Code embodying the Suggestions of the Commissioners* (London: Eyre and Spottiswoode, 1879) at 17.
- <sup>30</sup> See, for example, the discussion of consent in the Law Reform Commission of Canada's Working Paper 26 on *Medical Treatment and Criminal Law* (Ottawa: Supply and Services Canada, 1980). Chapter 23 of Professor Glanville Williams' *Textbook of Criminal Law* (London: Stevens, 1978) "is chiefly concerned with consent to what would otherwise be an offence against the person" (at 504, note 1). The chapter provides a valuable discussion of the general principles relating to consent, including consent by children.
- <sup>31</sup> *Draft Code*, sections 20 and 21.
- <sup>32</sup> *Criminal Code*, sections 12 and 13.
- <sup>33</sup> *Criminal Code*, section 14 (consent to have death inflicted upon oneself), section 45 (surgical operation on person incapable of giving consent). For the history and interpretation of section 45, see Starkman, *supra*, note 26. The Law Reform Commission of Canada, *supra*, note 25, considered that section 14, which provides that no person is entitled to consent to have death inflicted upon him "is strictly surplusage" because "consent is quite irrelevant to homicide offences" (at 137). In the *Digest*, the principle in section 14 was part of a group of seven consent provisions in which the author explained the extent to which consent affects the criminality of certain acts. Homicide was dealt with elsewhere in the *Digest*. Explanation by way of principles



makes the criminal law more accessible. Professor Glanville Williams explains the effect of consent as well as the crime: "[K]illing by consent . . . is still generally murder" (*Textbook of Criminal Law, supra*, note 30 at 531).

<sup>34</sup> *Supra*, note 25 at 36-41.

<sup>35</sup> *Constitution Act, 1867*, s. 91 (27).

<sup>36</sup> *Constitution Act, 1867*, s. 91.

<sup>37</sup> *Tobacco Restraint Act*, R.S.C. 1970, c. T-9. See *R. ex rel Barrie v. Stelzer* (1958), 119 C.C.C. 305 (Man. C.A.).

<sup>38</sup> *Hazardous Products Act*, R.S.C. 1970, c. H-3. See *R. v. Zellers Ltd.* (1982), 66 C.C.C. (2d) 236 (Man. C.A.); and *R. v. Cosman's Furniture (1972) Ltd. et al* (1976), 73 D.L.R. (3d) 312 (Man. C.A.).

<sup>39</sup> *A.G.B.C. v. Smith* (1967), 65 D.L.R. (2d) 82 (S.C.C.).

<sup>40</sup> *R. v. Hauser* (1979), 98 D.L.R. (3d) 193, at 210 (S.C.C.), *per* Pigeon J. In the *Hauser* case, the federal *Narcotic Control Act* was upheld, not under the criminal law power, but under Parliament's authority to enact laws for the "peace, order, and good government of Canada".



## Part II

# Extent of the Problem





## Chapter 4

# Advisory Reports and Previous Research

Known child sexual abuse is a fraction of its true occurrence. Much more crime involving sexual offences occurs than is detected or reported. Of the cases that are reported, only a proportion results in the laying of charges by the police, and of these cases, still fewer end with convictions. Only the most visible acts are cited by the media and these are usually restricted to those incidents involving serious crimes of sexual violence, or to those in which charges are laid and court hearings held. Police practices which on occasion may involve charging the accused with crimes other than sexual offences, and court practices restricting publicity, result in many cases of child sexual abuse known officially being masked from public attention.

Beneath the visible tip of child sexual abuse known to the police and the courts is a more sizeable number of partially hidden cases cared for by medical and child protection services and other community agencies. Legal sanctions are invoked in relatively few of these instances. When such action is taken, it may be under statutes other than the *Criminal Code* or action may be taken on other grounds such as the neglect of a child or a child being in need of protection. In a majority of instances in which charges are not laid the attending physicians and social workers refrain from reporting these cases to the police because they believe that the available evidence is inadequate, that the acts occurred in the past and have stopped, or that even if evidence is deemed to be sufficient, to proceed with laying charges would inflict greater harm on the child than would resorting to other, less official means of intervention. Such decisions rest in part on the beliefs that maintaining the unity of the family is of over-riding importance and that treatment and counselling are more effective ways of stopping these acts than seeking the punishment of offenders.

Evidence concerning the actual extent of child sexual abuse is fragmentary. There is no doubt that the true prevalence of these offences is unknown to the official helping services. The reasons why so many victims of child sexual abuse remain silent are documented elsewhere in this Report. They include an unawareness by the very young child that a crime has been committed, a deep-rooted shame associated with having been a victim, feelings of helplessness and a lack of self-worth, the disbelief and rejection by those persons who are close to the child and a fear of reprisal by offenders.

Telling others these closely guarded secrets requires considerable personal courage, since doing so invokes stigma, may result in the condemnation by family members or by persons who are responsible for their care and may lead to an external professional scrutiny of intensely personal concerns. There is much ignorance and uncertainty among victims about to whom they can turn for help. On occasion, when they do look for help, they may withdraw prematurely from seeking further aid if they feel they are disbelieved or are rebuffed by the offensive nature of the assistance which is provided.

While there is broad agreement about the sequence of attrition from the actual occurrence of child sexual abuse to the subsequent conviction of only a few of the offenders who committed these crimes, there is no consensus about how many children are involved at each stage or on the adequacy of the information upon which the various estimates of sexual abuse are based. The three principal views are that: child sexual abuse is widely prevalent; it seldom occurs; and since none of the sources is accurate, no valid estimates can be made.

Much has been said in recent years about the alarming extent of child sexual abuse in Canada. From this perspective the problem has become a widespread crisis warranting massive public intervention and assistance. In the absence of firm and sufficient sources of information, high rates are cited as established facts, proven solutions for the helping services are proffered and experts are called upon by child protection services and the courts for their counsel about the documented profiles of abused victims or child sexual offenders. Because these reports of high rates are often believed to be true, a self-fulfilling prophecy occurs. The reports are acted upon subsequently as though they are true with the validity of the initial sources on which they were based being forgotten or disregarded.

One major Canadian report stated that based on "reliable estimates", one in four girls and one in 10 boys were sexually assaulted at some point in their lives, or about 1.5 million Canadian children were the victims of these offences.<sup>1</sup> In the course of its work the Committee heard estimates given by professionals across Canada which ranged from one in 200 children to the assertion that every Canadian child at some point had been sexually assaulted. The rates most widely cited by the media and reported at special conferences dealing with these problems were that one in five girls and one in 10 boys were sexually assaulted before they became adults.

Indicating the divided nature of opinion about the occurrence of child sexual abuse, another attitude held by some Canadians was that few children were affected by these problems. At the same time, professionals have told the Committee that after special conferences on child sexual abuse were held in their regions, many more instances of such abuse were reported. If a problem is not recognized, there is little likelihood that it will be seen to occur. Once the problem is publicized, incidents will be seen to occur more often. Persons holding the view that few children are affected by sexual abuse, or who believe that unmet needs are virtually infinite and can be documented to justify the pur-



poses of special interest groups, help to perpetuate the comfortable myth that since few instances of sexual offences against children are seen to occur, there is little or no need to provide special protection for them.

At one major medical centre serving a large region, a senior professional told the Committee that there were no known instances of sexual offences against children. In another sizeable city, a highly trained specialist said that information on child sexual abuse should not be collected since doing so would disrupt the lives of many otherwise normal families. In a provincial capital a senior official questioned the utility of the findings of any survey, noting that existing resources were already strained to capacity, and for this reason, no new unmet needs should be documented. In another province the Committee was informed that professional workers were too busy providing services to have time to document fully what was being done and since each case of child sexual abuse was unique, there was no relevance in marshalling survey findings about these problems. These examples illustrate why in some quarters few instances of child sexual abuse were known to occur and why it was concluded that no changes were warranted in dealing with these issues.

In contrast with the views either that child sexual abuse is a widespread problem or that it seldom occurs is a critical viewpoint that assumes it is not possible to document the prevalence of sexual offences or that rejects all available sources on the grounds that they measure inadequately the extent of these problems. The former view was held in the 1957 British study on *Sexual Offences* that noted: "The actual number of sexual offences committed is unknown and consequently, the actual number of victims cannot be ascertained."<sup>2</sup> The sources of information about crime that are rejected on the basis of how findings are collected and classified include: the official crime reports assembled by police forces; victimization surveys in which persons report crimes committed against them; studies of persons, often juveniles, who report minor crimes they have committed; and the indicators derived from these sources which gauge the relative gravity of the occurrence of known offences. An anomaly about what is known of crime in Canada is that while some researchers reject existing sources of information as being inadequate, they ignore this caveat when they portray the attrition of crime from its occurrence through to the stage of the conviction of offenders.

In the 1969 *Report of the Canadian Committee on Corrections* (Ouimet Report), it was concluded:

The corrections field in Canada . . . has suffered from a lack of comprehensive, continuous and long-term planning based, as far as possible, on empirical information . . . little use has been made of research . . . Research answers to many criminological problems are not available, nor have research techniques or facilities been developed that could supply all the answers . . . In terms of the peculiar society that is ours . . . what has been discovered in other countries cannot be applied to Canada without re-examination.<sup>3</sup>

That inadequacies in the types of information about crime in Canada still abound was re-affirmed by the 1982 *Report on The Criminal Law in Canadian Society* of the federal Department of Justice.

The first comment made in Ouimet's chapter on crime (concerning the lack of reliable information) is, if anything, more applicable today. There are no data on convictions since 1973. One must rely on reports made to police—reported crime, not convictions. And the reliability of these data has been questioned.<sup>4</sup>

Much of the information reviewed by the Committee is based on the experience of sexually abused children who were treated by physicians or social workers or who were known to the police and the correctional services. In each instance in the surveys undertaken by the Committee, more detailed information was obtained from these sources than was available in the published annual statistics of these services. As noted in the two federal reports, an obstacle inherent in official Canadian crime statistics between 1969-82 is the absence of sufficiently precise information and the reliance upon non-uniform systems of classification. The *Uniform Crime Report's Statistics* assembled by Statistics Canada from police forces across the country, for instance, do not give information about the victims of crimes or their ages. The actual counting of criminal acts in these statistics varies for offences involving property or offences against the person; no specific sexual offences are listed with these crimes being grouped under a few broad categories.

A comparable situation exists involving the statistics assembled for medical and child protection services in which child sexual abuse either is not recognized in the classification codes (e.g., the *International Classification of Diseases*), or in which no uniform basis has been established to identify these abuses (e.g., child protection statistics). From neither of these sources is it feasible to determine how many children have been raped, who are the victims of incest or what other types of sexual abuse may have occurred.

Even given the lowest estimates of the extent of child sexual abuse in Canada, the problem is a matter of grave public concern. Until more reliable and comprehensive information is available, it will remain a matter of conjecture how many Canadian children are sexually assaulted. This is a valid concern. However, the Committee believes that at the level of what is now known about these offences, it is crucial to understand why sexually assaulted children do or do not seek help, the nature of the harm done, the scope and adequacy of the services provided for their care and protection and what steps it is feasible to take to prevent and limit the occurrence of these acts.

While recognizing the limitations of the findings given in advisory reports and available research studies, the Committee drew upon these sources as a contributory basis for its review and the mounting of its research. Rather than undertaking the futile exercise of pitting the findings of different sources against each other, the Committee believes that the complexity of the issues raised by sexual offences against children requires drawing upon the complementary experience of all services that come in contact with these children. In this respect no single source should or can be relied upon by itself to provide sufficient information.



## Legislative and Advisory Reports

During the 1970s the Government of Canada received reports with findings and recommendations from several legislative and advisory bodies with respect to the need to provide more effective protection for abused and neglected children. Acting in response to these reports, the Government: initiated and/or sponsored a number of projects on these issues; convened two national meetings to review the findings of a national child abuse study; extended support to crisis information services through cost-sharing arrangements with the provinces; and in 1978 created a federal desk for a Child Abuse Information Program that was incorporated in 1982 within the mandate of the National Clearinghouse on Family Violence.

With respect to sexual offences committed against children, legislation was tabled in Parliament in relation to some aspects of these problems. A review of these statutes is given in Part Three of the Report. In addition, stemming from the recommendations of these various advisory bodies, this Committee was appointed in recognition of the need for a more complete review than was then available of the extent of these offences and to consider how children might be better protected in this regard.

The initial proposals at the national level on ways to provide better protection for child abuse were made by two Standing Committees of Parliament. These reviews were undertaken by: the *Standing Committee on Health, Welfare and Social Affairs of the House of Commons*; and the *Standing Committee on Health, Welfare and Science of the Senate*.

In accordance with its Order of Reference of December, 1974, the *Standing Committee on Health, Welfare and Social Affairs* of the Commons was asked to make recommendations with respect to “appropriate measures for the prevention, identification and treatment of child abuse and neglect, and for such other ancillary measures in the same matter as the Committee may consider desirable”.<sup>5</sup> In the course of its sittings, the *Standing Committee* received testimony from expert witnesses, reviewed briefs and assessed the findings of a number of research reports.

While the *Standing Committee* recognized that child sexual abuse was a serious problem, it considered this issue within the context of the broader problem of child abuse and neglect. Among its central findings, the *Standing Committee* noted that:

1. Because of variations in definitions and reporting systems, there was no accurate figure on the occurrence of child abuse for Canada.
2. There was no one cause of child abuse or neglect.
3. The physical abuse of children was the extreme end of the continuum of child neglect.



4. The federal government had a role in respect to child abuse that was reflected in the *Criminal Code*, cost-sharing arrangements with the provinces and territories, grants for research and demonstration projects, and other consultative services.
5. Criminal proceedings, which were designed to punish the offender could be applied only in those cases where there was sufficient evidence to justify such proceedings, and such proceedings were probably not applicable in most cases because of the rules of evidence and other requirements.
6. The *Criminal Code* offered little by way of preventing or treating child abuse except that a conviction for an offence under the *Code* may remove the offender from contact with the child.
7. The reporting requirements in provincial laws with respect to the notification of child abuse were not generally understood.
8. The services available concentrated on the child after the problems had become known rather than focussing on assistance to families before a crisis had occurred.
9. Each case of child abuse must be treated on the basis of individual need and the unique circumstances of the case.
10. The public demand for punishment of offenders may cloud both the real issues of child abuse and the provision of services for families at risk.

In its Report to the House, the *Standing Committee* made 15 recommendations. These recommendations included:

1. *Preventive Services*: Support was recommended for a broad range of preventive measures. It was acknowledged that: "every child be entitled to adequate protective services in his own home and that these services include support services to parents as well as health and other community services to the child in his own right."<sup>6</sup>
2. *Research*: It was recommended that the Department of National Health and Welfare consider the advisability of ensuring that funds were available for research and demonstration projects relating to all aspects of child abuse, including: its etiology, identification and "the periodic follow-up, evaluation and cost-effectiveness of the program of preventive services."<sup>7</sup>
3. *Statistics and Information*: It was recommended that the Department of National Health and Welfare consider the advisability of providing assistance to the provinces with respect to the establishment of:
  - (i) a common data base on all substantiated cases of child abuse and for facilitating an exchange of information between provinces when persons active in a registry move from one province to another;
  - (ii) promoting an exchange of information on these issues by convening meetings; and
  - (iii) serving as a resource to the provinces on developments across the country in legislation, programs and services in child and family services, including services for the prevention of child abuse.

4. *Canada Evidence Act and the Criminal Code*: Amendments were recommended permitting a spouse to give evidence in criminal cases involving child abuse. The Standing Committee concluded there was no need: to amend the *Criminal Code* with respect to a mandatory reporting requirement in cases involving child abuse; and for the establishment of a federal child abuse registry.
5. *Public and Professional Education*: It was recommended that the Government consider means of extending public education on these issues through the media by the promotion of public affairs' programs on child care, family living and child abuse; that professional schools broaden the contents of their curricula by the inclusion of materials on the etiology of child abuse; and that training in child care be promoted in primary schools with additional courses given in secondary and post-secondary schools.

The second legislative review by the federal Government during the 1970s relating to child abuse was undertaken by the *Standing Committee on Health, Welfare and Science of the Senate*. In December, 1975, the Order of Reference given to the *Standing Committee* requested it to consider the feasibility of a Senate investigation on "Early Childhood Experiences as Causes of Criminal Behaviour". As a result of its initial review in which it was found that available information was "scant, highly technical and mostly American",<sup>8</sup> the *Senate Standing Committee* limited its inquiry to a consideration of the experience of children during the first three years of life.

The *Standing Committee* received testimony from a number of specialists, reviewed briefs and assessed several research reports. In tabling its Report in 1980, *Child at Risk*, the *Senate Standing Committee's* recommendations included:

1. A review be made of the offences specified in the *Criminal Code* with respect to those pertaining to all forms of child abuse.
2. An assessment be made of the purposes and effectiveness of existing child protection services and relevant legislation as these pertained to children in need of protection.
3. Support be given to expand the services provided by local child abuse and information programs.

In addition to its recommendations pertaining to child abuse, the *Standing Committee* also recommended that the federal Government establish a Canadian Institute for the Study of Violence having an independent board representing a broad spectrum of disciplines. The mandate for the Institute would include:

1. The co-ordination and evaluation of research on early childhood experiences as causes of violent behaviour in later life.
2. The funding of new research and pilot projects on vulnerable children.
3. The scheduling of opportunities (through workshops, research, journals) for members of different disciplines to review these issues.

4. To make recommendations about methods of reducing the incidence of violence in Canada.<sup>9</sup>

Between 1975 and the early 1980s, the *Advisory Council on the Status of Women* recommended that amendments be made to several sections pertaining to sexual offences in the *Criminal Code*. In October, 1975, the *Advisory Council's* brief on Bill C-71 recommended that evidence of previous sexual behaviour of a complainant with persons other than the accused should not be admissible and that a number of sections in the *Code* be replaced with broader categories of sexual assault. With respect to amendments related to the protection of children, the *Advisory Council* proposed that existing sections be altered to include sexual intercourse with children, the relatives of a minor, and any minor who was subject to authority by another person.

In expanding these proposals in 1976, the *Advisory Council* recommended that the *Criminal Code* be amended to make provision for four degrees of sexual assault.<sup>10</sup> As part of this redrafting of legislation, it was recommended that "protection from sexual intercourse . . . be provided to all persons under 14 years of age, whether they be male or female. It is our belief that a person under the age of 14 years is a child and lacks the experience or capacity to make decisions concerning sexual relations".<sup>11</sup> It was proposed that the following sections of the *Criminal Code* should be deleted.

- Section 144 (rape)
- Section 145 (attempted rape)
- Section 146[1] (sexual intercourse with a female under 14)
- Section 146[2][3] (sexual intercourse with a female between 14 and 16)
- Section 148 (sexual intercourse with feeble-minded)
- Section 149 (indecent assault on a female)
- Section 150 (incest)
- Section 151 (seduction of a female between 16 and 18)
- Section 152 (seduction under promise of marriage)
- Section 153 (sexual intercourse with female employee, step- daughter, foster daughter or female ward)
- Section 154 (seduction of female passengers on vessels)
- Section 155 (buggery or bestiality)
- Section 156 (indecent assault on a male)
- Section 157 (acts of gross indecency)

In making these proposals the *Advisory Council* stated "that laws against sexual assault should apply to all persons regardless of their sex, age, marital status or previous sexual conduct and recognize that all persons' sexual integrity should be respected and when necessary protected".<sup>12</sup>



In reiterating its position in 1979, the *Advisory Council* recommended that young persons should be protected from sexual exploitation by the specification of:

1. A statutory sexual offence applying where the victim is under 14 years.
2. An offence prohibiting the sexual coercion of young persons under 18 years by someone in a position of authority over them.

A number of the recommendations that had been made by the *Advisory Council on the Status of Women* with respect to amendments to the sexual offences in the *Criminal Code* were incorporated in Bill C-127 (1983).

The *Canadian Commission for the International Year of the Child* was established in 1978 with the objective of identifying and supporting activities that were designed to advance the rights, interests and well-being of children. The *Commission* reviewed some 4000 applications, of which 500 were funded. In its report, *For Canada's Children: National Agenda for Action*,<sup>13</sup> the *Commission's* recommendations included:

1. *Knowledge of Human Sexuality*: Children and youths have "the right to knowledge of the psychology of human sexuality, given in a medical or public health setting or in an appropriate agency by qualified people".<sup>14</sup>
2. *Protection from Sexual Exploitation*: That "the federal government enact legislation to protect children against all forms of sexual exploitation".<sup>15</sup>
3. *Child Pornography*: Children have "the right to be protected from premature exposure to, or erroneous information about human sexuality and from degrading and debased images of sexual behaviour in human beings".<sup>16</sup>
4. *Media Presentation of Sex and Violence*: "The producers and directors of television programs [should] reduce the present emphasis on sex and violence."<sup>17</sup>
5. *Reform of Sex Crime Laws*: With respect to the proposals pertaining to children, the *Commission* commended the recommendations on amendments to the sexual offences in the *Criminal Code* made by the *Advisory Council on the Status of Women* relative to Bill C-53 and Report Number 10 on *Sexual Offences* of the *Law Reform Commission of Canada*.<sup>18</sup>

As part of its program of legislative review, the *Law Reform Commission of Canada* issued a working paper on Sexual Offences in 1978.<sup>19</sup> Based on response that the *Commission* received to this report, a revision was reissued later that year.<sup>20</sup> A number of the legal issues raised in this report are considered elsewhere in more detail in the *Committee's Report*.

The *Law Reform Commission of Canada* called for a sweeping reform of some of the sections relating to sexual offences in the *Criminal Code*. It recommended that these sections be replaced or revised by two new categories of prohibited sexual conduct that were comprised of sexual interference and sexual aggression. With respect to the protection of the child, the *Commission* recommended that in line with its proposals, there be absolute protection under the

law for children under the age of 14 years and qualified protection for youths between ages 14 and 18 years.

The *Commission* proposed the enactment of a new offence, sexual interference due to dependency; this new statute would replace a number of existing sections of the *Criminal Code* including the offence of incest. The rationale underlying this latter recommendation was that "the Commission believes that incest should above all be a matter of social and psychological treatment; secondly, a matter of regulation by family and child welfare law; and only thirdly, a matter for the criminal law".<sup>21</sup> The *Commission's* recommendations like those of other advisory bodies were considered in the drafting of Bill C-53 that was tabled in Parliament on December 19, 1980.

As part of its commitment to the International Decade for Women: 1976-85, the Department of National Health and Welfare established the *Advisory Committee on the Status of Women*. The activities assigned to the *Advisory Committee* included a consideration of the issues of: violence against women; violence in the family; and crisis intervention. In the first report on its activities issued in 1980,<sup>22</sup> the *Advisory Committee* noted that the Department was undertaking a review of child abuse that had been established in November, 1978 in response to the recommendations of the Standing Committee on Health, Welfare and Social Affairs of the House, as part of Government's commitment to the International Year of the Child and stemming from consultation between the federal and provincial governments.

The two discussion papers that were prepared for the *Child Abuse Study* of the Department of National Health and Welfare were reviewed at meetings held in 1980 and 1981. Proposals were made at these meetings which were attended by representatives of some of the major child care service programs across Canada that steps be taken by government to review, and where appropriate, to implement the study's recommendations. The reports, an *Outline of Key Legislative Issues relating to Child Abuse* (1980) and *Child Protection in Canada* (1980), were issued as discussion papers in order "to promote a better understanding" of these issues. In the Preface to each report it was noted that the recommendations of the *Child Abuse Study* had "no formal status in terms of either official acceptance by the Department of National Health and Welfare or as a statement of government policy."<sup>23</sup>

The recommendations of the *Study's* first discussion paper, an *Outline of Key Legislative Issues relating to Child Abuse* (1980), included:

1. *Child Welfare Statistics*: Existing provincial statistics use different bases, definitions and classifications, "are not usually published, and if published, the categories chosen for publication differ from one jurisdiction to another"; legislative provisions should require the publication of certain basic statistics and "the federal government could undertake the responsibility for collating and publishing this information on a national basis."<sup>24</sup>
2. *Open or Closed Protection Hearings*: That the public needs greater knowledge about child abuse cases, and in this regard, "protection hearings



should be open to the public, reported by the press without an absolute ban on publishing any identifying information.”<sup>25</sup>

3. *Child's Evidence before the Court*: It was recommended that “child protection legislation should require the child to be properly observed and interviewed by an independent psychiatrist or psychologist” and that this information should “be properly recorded and accepted by the court as evidence going to the truth of the matters stated or observed.”<sup>26</sup>
4. *Child Protection Advocate*: It was recommended that the interests of the child be represented by a child protection advocate who would work independently of child protection services. Under this procedure child welfare services would be required to notify immediately the advocate of all suspected child abuse cases, the investigation would be under the authority of the advocate and be undertaken by an interdisciplinary team, and based on this review, the advocate would then be responsible for the decision of whether a court application should be made, and if this were done, the advocate would represent the interests of the child throughout the court proceedings.
5. *Reasons for Judgment*: Noting that written judgments were “not usually given in protection cases” and “even when written, they are rarely reported”, it was recommended that there be “a statutory provision requiring the court to give adequate reasons for judgment” and where reasons are given orally, that they be transcribed by the court reporter, and copies be maintained in court files.
6. *Role of Criminal Law*: “Where there is a reasonable chance of successfully treating the abusive parent, therapy is preferable to criminal prosecution . . . imprisonment has rarely proven a successful method of rehabilitation.”<sup>27</sup>

The second discussion paper of the Department of National Health and Welfare’s *Child Abuse Study* expanded upon some of the recommendations of the first report and dealt in greater detail with aspects involving the provision of services for abused children. The recommendations of this report, *Child Protection in Canada* (1981), included:<sup>28</sup>

1. *Child Protection/Welfare Statutes*: That these statutes be amended with respect to the definitions of a child in need of protection, the concept of abuse be set aside in favour of more specific categories, and consideration be given to whether a child’s condition should be tied to the conduct of parents.
2. *Child Abuse Registries*: That all provincial child protection statutes should stipulate mandatory reporting, that the persons making reports should be notified of the decisions taken, and that a central registry should be established that would enable the identification of children who are repeatedly abused, the listing of the families that moved between jurisdictions and the compilation of national statistics on reported cases of child abuse.
3. *Service Statistics*: That the provinces and territories maintain information on: the basic reasons for children being in protective custody; a specification of the problems experienced by these children; and a listing of the ser-



vices provided for them; and that the federal government should provide financial assistance to the provinces to establish the collection of these statistics.

4. *Deaths of Children in Need of Protection:* Based on a review of 54 deaths (none resulting from sexual assault), it was recommended that: efforts be made to obtain more accurate information on the extent of child deaths resulting from abuse; that coroners receive training in the recognition of the signs of child abuse; that deaths of this kind should be incorporated into a central registry; and that more indepth research on these issues was warranted.
5. *Child Protection Teams:* Based on a detailed review of the structure and operation of a number of child protection teams, it was recommended that: all cases of child abuse should be handled by an interdisciplinary team comprised of the disciplines of social work, paediatrics, nursing, psychiatry, psychology, Crown attorneys and the police; that these teams operate independently of child protection services and hospitals; that the teams have the authority to require other social agencies to provide services under team supervision; that where legislation or policies on confidentiality prevented or inhibited the exchange of information on a child between services, the legislation should be amended in this regard; that the teams should receive funding from several ministries; that financial support be given to the establishment of a number of pilot projects on a three year basis for purposes of demonstration, evaluation of services provided, and benefits received by children; and that the Department assist actively in the establishment of these teams by means of fostering research, the scheduling of meetings between existing programs and the publication and exchange of information.

In addition to its detailed recommendations, the Department's *Child Abuse Study* concluded that:

Very little material on the problem of child protection has been published and widely circulated in Canada . . .

The public has both a right to know and a need to know more about the problem. It is therefore recommended that the Department of National Health and Welfare, prepare and publish an annual report on child protection in Canada including national statistics, a review of legislation and policies in Canada, developments in selected foreign jurisdictions, an analysis of significant judicial decisions and other relevant and useful information.<sup>29</sup>

In addition to the reports on child abuse and neglect undertaken by legislative and advisory bodies at the national level during the 1970s, numerous reviews containing recommendations were made at this time by voluntary associations and provincial and municipal committees. In these respects, the interests of the child have been strongly presented. There is, however, a considerable shortfall between the recommendations that have been made by these sources and the steps that have been subsequently taken. It is apparent from the Committee's review that, for whatever reasons, most of the recommendations of these various reports have not yet been implemented and that the actions that have been taken are seldom commensurate with the intent of the bodies making these proposals.

In considering the recommendations of the various legislative and advisory committees, it is evident that the feasibility of implementing many of these proposals is limited by constraints that are inherent in the administration and provision of child protection services. Foremost among these limitations is the divided constitutional authority between federal and provincial levels for ensuring protection for the health and welfare of children. At the level of providing services directly to children, there is a further division of responsibilities between several helping professions, each of which specializes in a particular aspect of child abuse and in each instance having their work governed by different statutes. In this situation of divided legislative and service responsibilities, recommendations made to one level of government or pertaining to only one facet of child abuse, cannot be expected to achieve a comprehensive reform of child protection services for children who are abused and neglected.

Several of the reports on child abuse prepared by national advisory committees recognized the need for better information and research on the extent of these problems, the special needs of abused children and the effectiveness of services that were provided on their behalf. The earlier reports considered the broader aspects of child abuse while in later reviews, more attention was given to the issues of child sexual abuse and changes in the sexual offences in the *Criminal Code*. With respect to child sexual abuse, a number of admirable ameliorative proposals were recommended but in most instances the evidence to support them was still lacking. For the most part, these reports drew selectively, and in some instances not at all, on the research on sexual offences that had been completed for Canada at the time when the reviews were being undertaken. The reports of the advisory bodies serve to highlight the broadening recognition of the problem of child sexual abuse and the identification of special issues warranting more detailed documentation and consideration with respect to how these children might be better protected.

## Child Abuse Information Program

As an administrative means to review the reports and recommendations of the legislative and advisory bodies, the Department of National Health and Welfare struck an *Ad Hoc Committee on Child Abuse* which consulted with agencies in the private sector and provincial child protection services. The *Ad Hoc Committee* recommended in 1978 that a federal desk be established which would assemble and distribute information for Canada on child abuse and neglect. This program was approved at the end of that year.

At this time an interdepartmental committee, established in relation to the International Decade of Women, was reviewing the problem of family violence with particular attention being given to the situation of battered women. In its first annual report (1980), the *Advisory Committee* reported that:

As a service to groups offering assistance to victims of family violence and rape, Health and Welfare Canada will establish, by 1980, a National Clearinghouse for legal, research and service information and technical assistance.<sup>30</sup>

In January, 1982, the Minister of National Health and Welfare announced the establishment of the *National Clearinghouse on Family Violence*. The previously established federal desk for the Child Abuse Information Program was incorporated into the work of the *Clearinghouse*. During its initial period of operation, this unit had a complement of two staff positions.

The mandate assigned to the *Clearinghouse* dealt with four problems, each of which involved some form of abuse or violence. These issues included: family violence; battered women; child abuse; and the abuse of the elderly. In relation to these problems, the responsibilities assigned to the *Clearinghouse* were:

1. *Information and Statistics*: The collection, analysis and dissemination of information on: the occurrence of these problems; the services being provided; the legal issues involved; the development and collation of training materials for professional service workers; the preparation and listing of audio-visual materials; and other sources of information which pertained to these issues.
2. *Consultation*: The *Clearinghouse* was established as a resource for consultation to the federal and provincial governments on issues related to family violence.
3. *Technical Assistance*: The provision of technical aid to professionals and the public in relation to the four issues falling within its mandate.

In a report on the work undertaken by the *Clearinghouse* that was prepared for the Committee, it was noted that the following activities had been initiated.

1. *Bibliographies and Information Kits*. The preparation and distribution of a number of bibliographical inventories and information kits.
2. *Newsletter*. A newsletter setting out the objectives and activities of the *Clearinghouse* had been prepared.
3. *Audio-visual Catalogue*. A listing of audio-visual materials had been prepared for circulation to interested professional and voluntary groups.
4. *Professional Training Manuals*. Materials deemed pertinent for the training of professional workers had been assembled and circulated.
5. *Survey of Transition Houses*. A national survey had been started focussing on the programs and services provided by Transition Houses.
6. *Schools of Social Work*. A survey had been undertaken of the curricula pertaining to family violence that were offered by Canadian schools of social work.
7. *Purchase of Films*. In collaboration with the National Film Board, a number of films had been purchased for the Family Violence Film Library.

During the initial period of its operation the *National Clearinghouse on Family Violence* focussed on the collation and distribution of general sources of information on family violence and child abuse. The available staff resources precluded the undertaking of extensive research on these issues and the more



comprehensive evaluation of the services that were being provided. With respect to child sexual abuse, no special initiative had been undertaken in this regard in recognition of the review that was being made by the Committee.

## National Child Sexual Abuse Statistics

The growing recognition of child sexual abuse can be traced in the trends occurring in the reporting of these offences in the annual statistics reports of provincial child protection services. As noted elsewhere in the Report, the classification of these incidents varies between provinces and depends upon somewhat different reporting procedures.

Prior to 1977, there were few references to child sexual abuse in the annual reports of provincial child protection services and few statistics listing these incidents. This situation changed in 1977 when 300 sexually abused children were identified. There was an increase of 431 per cent by 1980 when 1593 cases were reported. The rate of annual increase since 1977 has fluctuated sharply, rising by 6.3 per cent between 1977-78, 275.2 per cent between 1978-79, and 33.0 per cent between 1979-80. These sharp changes are attributable to increased public awareness, significant improvements in the capacities of the reporting systems, and the number of new protection services that were geared to reach these children.

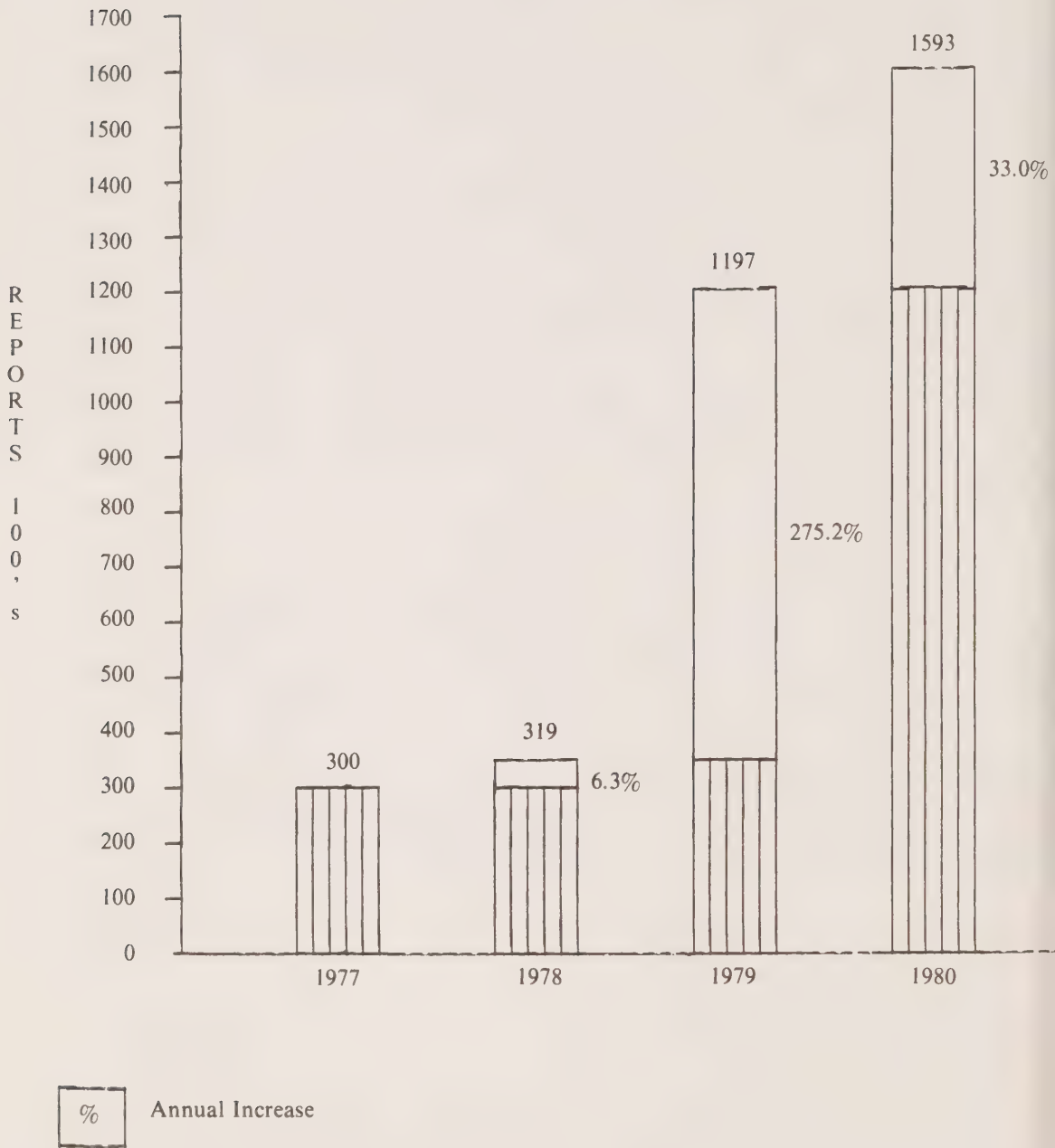
The proportion of Canadian children under the age 16 who were suspected or known by provincial child protection services to have been sexually abused was three in every 1000 children in 1980. No comparable statistics are available for other branches of the helping services (police, health, corrections). As shown elsewhere in this Report, the rates derived from published annual statistical reports of provincial child protection services do not provide an adequate estimate of the known prevalence of sexual offences against children. What these statistics represent, however, is a positive and strong endorsement of the steps that have been taken to strengthen child protection services, leading to the detection of substantially more sexually abused children.

## Estimates of Occurrence

Much of the research on the occurrence of sexual offences in Canada comes from studies that were undertaken for other purposes and focusses on the experience of adults. This collection of research is comprised of a mosaic of different groups, definitions and sources of information that has yielded sharply contrasting estimates of the extent of these problems. The estimates that are derived from these research reports vary from well under one per cent to a quarter of all Canadian women having been sexually assaulted. These estimates include:

Chart 4.1

*National Child Sexual Abuse Statistics:  
Provincial Child Protection Services, 1977-80<sup>1</sup>*



<sup>1</sup>Annual Reports, Provincial Child Protection/Welfare Services, 1977-80

Source	Group Studied	Proportion Sexually Abused/ Assaulted
Solicitor General (1979)	10,248 persons over 16 in Vancouver	0.5%
Solicitor General (1981)	817 persons over 18 in Quebec, Ontario, Manitoba	3.6%
Le Comité de la protection de la jeunesse (1978-80)	Child protection cases relative to Quebec population under age 17	0.02-0.04%
Advisory Council on the Status of Women (1976-81)	551 women surveyed in Winnipeg	20.1%
Ontario Rape Crisis Centres (1981)	513 persons seen at five Rape Crisis Centres	25.0%
Canadian Human Rights Commission (1981)	2004 persons in national population survey	48.7% females 33.2% males

The major studies that have obtained information on the reporting of crime by Canadians, some of which have dealt with sexual offences, include:

1. Victimization surveys, or those which have asked Canadians directly if crimes had been committed against them (Toronto, British Columbia, Edmonton, Vancouver, and a national sexual harassment survey).
2. Community surveys for London, Selkirk and The Pas.
3. The experience of sexually assaulted children treated by child protection services in Quebec.
4. The sexual behaviour and knowledge of school children (Saskatchewan, Calgary and Saguenay — Lac St. Jean, Quebec, and students attending an unidentified high school in Quebec).
5. A survey of rapes reported in 1970 to the Toronto Metropolitan Police Force.
6. Sexual assaults committed against women in Winnipeg.
7. Sexually assaulted persons who went to five Ontario Rape Crisis Centres.
8. National opinion surveys on physical child abuse, homosexuality and pornography.

While the case records and investigation files or charts of the helping services contain much valuable information about sexual offences and child sexual abuse, these sources have seldom been drawn upon as a means to document the types of crimes that may occur or how they are handled when they are brought to the attention of these services. The full potential of these sources is not real-



ized when summary official statistics are assembled for purposes of documentary annual reports. An instance of this is the unrealized potential of the *Uniform Crime Report Statistics* assembled annually by Statistics Canada from police forces across the country. While police investigation files contain extensive information about victims, offenders and the incidents that were investigated, little of this information is abstracted in the official statistics.

In the reporting of national crime statistics for Canada, all types of sexual offences are aggregated into a few general categories, a classificatory system that precludes an analysis of particular offences. No information is given in these sources about the victims of the crimes, and for this reason, they cannot be used to assess the reported extent of sexual offences against children. The anomaly is that while such information is available, it has been regarded as more important to list information about crime and offenders than about persons who are victims. These statistical reporting procedures have functioned to mask the extent to which children were involved as victims.

## Victimization Surveys

In order to obtain better information about the unreported or "dark side" of crime, a number of surveys have been undertaken across Canada by academic researchers and under the aegis of the federal Department of the Solicitor General. Most of these surveys did not obtain information about sexual offences or the experience of children. Taken together, the victimization surveys indicate that the reporting of the extent of crime varies considerably depending upon which sources are drawn upon and upon which survey procedures are used to collect such findings. The central implication of these studies is that no single survey or source is sufficient by itself but rather, a multifaceted research survey approach needs to be adopted in order to reflect the complex ways in which crime occurs, the range of persons affected and the ways in which it is dealt with.

One of the first victimization surveys undertaken in Canada was a study in the 1960s of 967 Toronto residents, about one in eight (13.0 per cent) of whom had been threatened or physically assaulted during the previous year.<sup>31</sup> Among all types of crime there was a substantially higher reporting to the police concerning property offences (35 to 45 per cent) than by persons who had been threatened or assaulted (12.5 per cent).

These findings about the selective reporting of different types of crime were subsequently confirmed by the more extensive victimization surveys undertaken by the federal Department of the Solicitor General. Along the gradient of crimes reported to the police, those which are least likely to come to their attention, are offences committed against persons, and among these, threats or assaults by strangers or persons who are not well known to the victim are more likely to be reported than those committed by persons known by victims.

Using a different survey procedure, a 1974 study of 956 respondents in British Columbia found that one in 20 (4.3 per cent) had been threatened or assaulted.<sup>32</sup> These incidents were more often reported by younger adults, persons with broken marriages, and three times more frequently by males than by females. In comparison with the victims of vandalism, theft or robbery, more persons who had been threatened or assaulted assessed the work of the police less favourably, and more of them felt the police were too lenient in their handling of suspects. While one in five of all respondents felt the police were too lenient with suspects (20.2 per cent), one in three of the victims of assaults (31.6 per cent) held this view.

During the 1970s the federal Department of the Solicitor General initiated a series of four crime victimization surveys.<sup>33-34</sup> These surveys tested methods of asking Canadians whether they had been the victims of crime, what had happened and to whom they had reported the incidents. The first surveys for Edmonton (1976-77) and Hamilton (1978) drew upon police records, had follow-up contacts with victims known to the police, and tested the feasibility of using a different means of collecting these types of information. While samples were selected of the records of other types of crime, all or a disproportionate number of police general occurrence reports involving investigation of sexual offences were included in these analyses. For this reason, the rates listed for sexual offences (3.01 and 3.28) over-represented substantially their actual proportion as compared to that of all of the offences known to the police forces. Neither victimization survey obtained information from the police records about children or youths who may have been victims. The Edmonton study collected information from persons 18 years and older, while the Hamilton survey of the following year included persons who were 16 years and older.

These victimization surveys found that many persons, when interviewed a year after the occurrence, were reluctant to admit they had been victims and that some recalled the incident inaccurately. The 1978 Hamilton survey followed up 94 sexually assaulted cases known to the police. Of these 94 persons, 51 or 54.3 per cent were contacted a year after the incidents had occurred. These 51 victims were subsequently interviewed, and while 39 or 76.5 per cent acknowledged that the offence had occurred, 23.5 per cent denied having been victims. Among the victims who were willing to speak about the sexual offences, only 38.5 per cent recalled accurately in which month they had been assaulted.

A general finding in studies on sexual offences is that a substantial number of these crimes are committed by persons whom the victims know, either well or as casual acquaintances. For a number of intensely personal reasons, many of the sexual assault victims choose not to report the offenders to the police, preferring not to have these matters become subject to official or external scrutiny. In the surveys for Hamilton and Edmonton, police records were used as the means of identifying persons who were contacted about crimes that had been committed during the previous year. Many of those who were contacted may have feared that these cases might reopen officially when they wished them to remain closed.



The methods used in the surveys for Hamilton and Edmonton may have contributed to the reported reluctance of victims to discuss the incidents. As well, the respondents were interviewed. While interviewing may be an appropriate approach to collect other types of information about victimization, it is less likely to be the case when a stranger inquires about sensitive personal matters such as sexual assaults, particularly when these may have been committed by family members, friends or acquaintances.

The third victimization study in the series undertaken by the federal Department of the Solicitor General was a telephone survey in 1979 of 10,248 persons over the age of 16 who lived in Vancouver.<sup>35</sup> While the questions asked about sexual offences focussed only on rape and attempted rape, all reported instances of sexual assaults were subsequently incorporated. For this reason, it is uncertain what is the actual range of the acts for which findings are given.

The reported occurrence of sexual offences among the residents of Vancouver in 1979 was 0.34 per cent. When this rate is prorated only for females, it rises to 0.50 per cent; this is approximately five in 1000 women who said that they had been raped, that a rape had been attempted, or that they had been otherwise sexually assaulted. A majority of the victims (69.5 per cent) were young, single, adult females who had been assaulted by strangers (63.6 per cent) in public places (78.4 per cent). In about a third (37.1 per cent) of the instances, alcohol was involved. About half (48.4 per cent) said they had been injured, but fewer (41 per cent) sought medical care. As with the findings of other such surveys, few of the respondents reported the incidents to the police.

The results of the Vancouver survey concerning the reporting of sexual offences differ substantially from the findings of most studies of this kind and may reflect more how the survey was conducted than the actual frequency of the occurrence of these incidents. Most of the sexual assault incidents were reported to have been committed by strangers and to have occurred in public places. While this may be a feature of these crimes that is peculiar to Vancouver, the findings of the Committee's research (police force records, child protection and medical services and national population survey) suggest that the survey procedure used was not wholly effective in documenting the full range of these assaults. The sexual offences reported in these telephone interviews were only those which the women were willing to discuss, namely, those in which most of their assailants' identities were unknown to them.

The fourth victimization survey undertaken in 1981 by the federal Department of the Solicitor General obtained information from 817 persons who were 18 years or older living in Quebec, Ontario and Manitoba, 76.4 per cent of whom lived in Montreal, Toronto and Winnipeg.<sup>36</sup> This survey focussed on the attitudes of these persons towards the administration of justice and obtained information about whether they had been the victims of 13 different types of crimes. Confirming the results of other studies, the 1981 survey found that while most of these persons endorsed strongly the work of the police (89.2 per cent), they believed that the courts were too lenient with criminals (72.0 per cent). As in other surveys of this kind, the distinction is usually not made



between the nature of the evidence presented in court and the sentencing decisions that are reached.

The survey asked the respondents three questions about their sexual attitudes, activities and their experience with sexual offences. One of these questions was if “homosexuals should be accepted in our society like everyone else?” Over half of the persons who were interviewed (58.7 per cent) agreed with this statement, 36.5 per cent disagreed and 4.8 per cent gave no reply.

Another question dealt with the knowledge and the participation of these persons in local programs of crime prevention. “Women’s associations against rape” was one of the community resources that was included in this question. Although three in five of the respondents (59.2 per cent) said that they were aware of these associations, only a few (0.9 per cent) had contacted them or participated in their programs.

The results of other victimization and community surveys show that there is a selective reporting by victims of crimes to the police. This trend also emerged in the results of the 1981 survey. A third of the persons in the survey (33.8 per cent) said that they had notified the police after they had been threatened or attacked with a weapon and a quarter (24.2 per cent) had done this after they had been physically assaulted or injured. Among the 13 types of crimes that the persons in the survey were asked about, the victims of sexual assaults ranked the second lowest in terms of notifying the police of these incidents.

The wording of the question: “Have you ever been forced to have sexual relations?”, did not specify what was meant by force or sexual relations and no information was asked about by whom these assaults had been committed or when they had happened. Of the 3.6 per cent of the persons who said that they had been the victims of “forced sexual relations”, half (50.0 per cent) said that these episodes had happened once and that most of the incidents (77.8 per cent) had occurred over three years prior to the survey. Only one in seven (14.7 per cent) of the offences had been reported to the police.

In reviewing cases that were brought to its attention over a period of years, the *Canadian Human Rights Commission* found that a considerable number of complaints involved reports by persons about sexual harassment at their places of work. In order to document the extent of these problems, the Commission undertook a national population survey in 1981 of 2004 persons who were age 18 years and older.<sup>37</sup>

In the Commission’s survey, unwanted sexual attention was defined to include: leering or suggestive looks; sexual remarks or teasing; subtle sexual hints and pressures; touching, brushing against, grabbing or pinching; repeated pressure for a personal relationship or sex; and forced sex. Two in five persons (41.2 per cent) said they had experienced one or more of these forms of unwanted sexual attention with the proportion of women who had experienced these acts being higher (48.7 per cent) than that for men (33.2 per cent).

The survey also reported that about one in eight persons said that they had experienced repeated pressure to have a "personal relationship or sex". Two per cent said they had been forced to have sex at some time in their lives; the proportions were: three per cent of the women and one per cent of the men. The persons included in the 1981 national survey were also asked if they had been "harassed" by the persons who had committed these acts. The assessment of what constituted harassment was left to the judgment of the respondents. No distinction was made in the survey about the explicit nature of the threats, what type of forced sexual acts may have been committed and how old the persons were when these incidents had occurred.

When all types of unwanted sexual attention were aggregated together, the 1981 survey found that over two in five of these acts (44 per cent) had been committed by co-employees, about one in five by other persons whom the respondent knew (20 per cent) and most of the remainder had involved strangers. Overall, two in three of the victims of these unwanted sexual acts had known the persons who had accosted or assaulted them. There was no further identification given in the Commission's report about the identity of these persons, e.g., whether they included family members, relatives or acquaintances. Because there was an imprecise specification of the nature of the association between the persons who were involved in these incidents and of the types of sexual acts that had been committed (e.g., pressure for relationship, forced sex), no direct comparison is feasible between the results of this survey and either other victimization surveys or the National Population Survey that was undertaken by the Committee.

The main features of some of the major victimization surveys for Canada document the sharp and persistent discrepancy between crimes actually committed and those reported selectively or discovered by the police and other helping services. These studies also raise a number of "warning flags" about the circumstances under which persons who have been the victims of certain types of crime, such as sexual offences, may feel reluctant to discuss them subsequently with strangers, or without sufficient preparation. The hallmark of these studies has been their preoccupation with crimes committed against adults. Based on this assumption, only the experience of adults was considered to merit research attention.

## Community Surveys

The intent of the 1970 mailed questionnaire survey of heads of households living in London, Ontario was "to document public attitudes concerning legal sanctions for a wide variety of criminal activities in Canadian society."<sup>38</sup> Included in the listing of the offences that 451 respondents were asked to rate on a nine-point scale (ranging from no penalties and fines to imprisonment and execution) were: rape, attempted rape, prostitution, the prostitutes' clients and homosexual acts.



The results for rape and attempted rape were similar with the most frequently assigned penalty being imprisonment for between two and five years. In contrast with these serious sexual offences, most of the persons in the survey felt that either there should be no penalties or only fines and probation for: prostitutes (70 per cent); the clients of prostitutes (90 per cent); and persons committing homosexual acts (79 per cent).

On the issue of the legal sanctions that the respondents recommended in relation to prostitution, the 1970 London report noted that "although the penalties for the female in this case are relatively light, the sentences given to the male who uses the prostitute are even more lenient".<sup>39</sup> Homosexuality was defined as "two members of the same sex (who) engage in sexual relationships", an activity that was said to be "no longer defined as a criminal activity in Canada".<sup>40</sup> Perhaps as a result of this misinterpretation of the existing criminal law, no distinction was made in the survey with respect to minors who may have engaged in these acts.

While the 1970 London report recognized that the views of these respondents could not be generalized to the Canadian population, its authors were optimistic that "the data gathered in London may, more than any other single area, have the greatest applicability".<sup>41</sup> In comparing the composition of the sample to the 1961 Census statistics for the city, it was concluded "that there are no statistically significant differences between the London population as a whole and our return sample".<sup>42</sup> While this assumption may have been valid in relation to the sample reflecting the characteristics of the heads of households, this group of respondents represented a narrow cross-section of that city's total population. The 451 persons from whom the results were obtained were predominantly middle-aged (median age, 42 years) males (88.0 per cent) who were married (86.7 per cent), protestant (72.1 per cent) and presumably anglophone (the language of the questionnaire).

Only about one in eight of the respondents was a female, a group that other research reports have shown comprises a majority of the victims of sexual offences, and whose views, had they been more fully represented, might have yielded somewhat different results than those given in this Report.

As part of a program designed to identify local crime problems and the public's assessment of enforcement services (police, the courts, corrections), the *Royal Canadian Mounted Police* (R.C.M.P.) in 1979 surveyed the rural and urban municipalities of Selkirk and The Pas in Manitoba.<sup>43</sup> The surveys included: the documenting of all service calls to the police; an assessment of police files involving investigations; four separate community surveys of residents; and extensive meetings with local leaders.

The number of service calls involving sexual offences in 1979 for the four regions ranged from 0.2 to 1.0 per cent. While these constitute a small number of cases, the rates varied by 400 per cent between the rural communities. A comparable variation was found in the number of sexual offences which were investigated by the police with an 800 per cent difference between 0.1 per cent reported for rural Selkirk and 0.9 per cent for rural The Pas.



About a third of all crimes reported to the police were not witnessed, with the proportions for particular offences varying between 29.0 and 38.6 per cent. These comprehensive community studies confirmed that the police relied heavily upon the participation of the public to bring offences to their attention. Between a third (32.3 per cent) and a half (49.5 per cent) of the police investigations were initiated by complaints made by the public, while those resulting directly from police work ranged from 18.0 to 32.8 per cent. When the residents of the four communities were asked how they rated the effectiveness of enforcement services, most strongly endorsed the work of the police (nine in 10 giving a strong positive rating), only about a half rated the courts positively and well less than half approved the work of the correctional services. These community assessments of crime prevention called for strengthening of police work when juveniles were involved, greater public visibility for the work of the police and more effective ways to involve the public in the reporting of offences.

The residents of the four communities in Manitoba were asked whether they feared that they were likely to become the victims of seven types of crime. One of these fears was that of being sexually assaulted. Among all residents, this was the least feared of the seven crimes. Between 1.7 and 3.7 per cent of the persons who were interviewed said there was a "certain" or a "good" chance they might be sexually assaulted (a difference in perceived risk of 118 per cent). On average, the number of persons stating they feared being sexually assaulted was five times the number of actual cases of sexual assault investigated by the police. There was no direct association between the perception of risk and the number of cases known to the police in the four communities. The community with the lowest proportion of cases (0.1 per cent) reported to the police had the highest number of persons (3.0 per cent) who felt there was a certain or good chance that they might be sexually assaulted. It is unknown whether this greater sense of concern in some of the communities led to greater precautions being taken that in turn accounted for the lower occurrence of reported sexual assaults.

What is unusual about the community surveys for Selkirk and The Pas is that several complementary surveys were undertaken, a procedure which permits the comparison of findings obtained from different sources within these communities. With respect to sexual offences, it was found that the reported prevalence of these crimes varied both between communities and with regard to the perceived risks of being sexually assaulted. What is unknown from these community surveys for London, Selkirk and The Pas is how many persons were actually assaulted sexually, their ages, sexes, and how such experience may have affected their willingness to report these crimes, and their perception of the relative risks of being assaulted.

## Quebec Child Protection Surveys

The most extensive surveys for Canada of sexually abused children who are cared for by child protection services have been undertaken by *Le Comité*

*de la protection de la jeunesse of Quebec*. Between 1975-81, Le Comité completed four major studies that included: surveys of child abuse in 1975-76 and 1978; an analysis of incest in one region; and a report on the sexual experience and knowledge of teenagers.

Based on its research and annual provincial child protection services' statistics, Le Comité found that a sharp increase had occurred in the reporting of cases of child sexual abuse. In 1978, 7.4 per cent of cases that were handled by child protection services involved sexual abuse. This proportion rose to 17.7 per cent in 1979 and to 22.9 per cent in 1980, or a tripling of the reported occurrence during three years. The research reports of Le Comité attributed this sharp increase to a greater willingness by victims and their families to report these offences and the impact of the application of amended child protection legislation which had facilitated the identification of these incidents.

In terms of the cases known to provincial child protection services, Le Comité estimated that in 1977, 0.20 per cent, or two in every 1000 children, were abused. When the number of sexually abused children reported to Le Comité are calculated, the incidence rose from 0.02 per cent to 0.04 per cent between 1978-80. Acknowledging the inadequacy of the sources of information about the actual extent of the offences, Le Comité estimated that the unreported incidents were at least twice the number of known cases.<sup>44-45</sup>

The results of the 1975-76 survey that was undertaken shortly after Le Comité was established are given briefly as its results were documented further by Le Comité's more extensive study completed in 1978. The 1975-76 survey drew upon a sample of 600 child protection records from child protection services across Quebec. A total of 28, or 4.7 per cent, of the cases involved child sexual abuse. Two in three of the children had been assaulted by a member of the family (fathers, 43.5 per cent; a substitute parent, 17.7 per cent; and in-laws, 4.3 per cent). Several of the children were subsequently found to have behavioural problems with 15 per cent being assessed as socially maladjusted, 11 per cent had educational difficulties, seven per cent had signs of mental deficiencies and six per cent had language or speech problems.

About half of the sexually abused children (48 per cent) were removed from their homes under court orders. Following the initial reporting of the cases to child protection services, 61 per cent of the sexually abused children were visited once by social workers and 17 per cent of them twice. After the children were removed from their homes, two in five were not contacted further by child care workers.

In 1977, amendments were proclaimed to the provincial child protection act. The 1978 study by Le Comité, called *Operation 30,000*, was a follow-up to the 1975-76 survey; it served as a basis to assess the operation of the new legislation.<sup>46</sup> Among the approximately 30,000 children served across Quebec by Le Comité, 6299 were reported by case workers to have been abused or neglected. Of this total, 398 children (6.3 per cent) were the victims of sexual offences.



The 1978 child abuse survey by Le Comité assembled cases from all regions of Quebec and the findings obtained indicate that there were extensive regional variations in the reporting of these cases. Confirming the results of the 1975-76 survey, the 1978 study found that 57 per cent of the children were socially maladjusted and 52 per cent were physically handicapped (visual, hearing, organic, mental deficiency, behavioural problems).

In addition to its review of child protection services provided for sexually abused children, the 1978 survey asked social workers about the objectives of these services and how such assistance was most effectively provided. While most of the case workers believed that attaining a stable environment for the child was the ultimate objective to be achieved, there was no consensus how this was to be done. A fifth of the workers advocated that a child should be kept with his or her family. Other options including the temporary or permanent removal of the child were endorsed by half of the social workers (53 per cent). Over half of them (57 per cent) called for improving parental attitudes and behaviour and about a third (30 per cent) focussed on the need to assist the child.

There were sharp disparities between the objectives of child protection services that were held by case workers and how such services were provided for sexually abused children. Between 1975-78, there was a marked shift towards more of the sexually assaulted children being removed from their homes. In the 1975-76 survey, 48 per cent of the children were taken from their homes, a proportion that had risen to 77 per cent by 1978. The average length of placements was about three years (35 months). Less than half (45 per cent) of the families from whom the children had been taken did not receive counselling or assistance from child protection services. Following their temporary placement, 55 per cent of the children were returned to their families without case workers assisting them in making the reunions.

Le Comité's third study of child sexual abuse was an indepth review of the experience of 36 girls who had been the victims of incest.<sup>47</sup> The case records of these children who had been seen by social workers during 1979 in the Outaouais Region were reviewed; five of the girls were interviewed. The report concluded that the amendments to the child protection legislation had facilitated the reporting of cases of incest, as assailants were less threatened with the fear of prosecution than before these changes had been made. These children were not only the victims of the offences, but in some instances, of the system that was intended to help them. Numerous gaps in the types of services provided were noted in the Report. An instance that was given of the need to strengthen these services was that with the exception of one social worker, none of the others had the requisite training or the experience to deal adequately with the victims of incest or their families.

At the request of the local board, Le Comité undertook a comprehensive review in 1981 of the sexual behaviour, knowledge and attitudes of 133 teenagers.<sup>48</sup> The findings of this study are reviewed with other surveys of the sexual behaviour of Canadian school children. In addition to the four research studies



on child abuse, Le Comité continued its concern with these issues by collaborating with the National Child Protection Survey undertaken by the Committee. Le Comité encouraged the development of the national survey, pre-tested the research protocol that was used subsequently in other provinces, and in 1981-82, completed a sample survey of cases of child sexual abuse that were treated by child protection services across Quebec.

The comprehensive and detailed research by Le Comité de la protection de la jeunesse is a significant contribution in documenting the dimensions of sexual offences against children, who the victims were, how they were harmed, and how services were provided for them. What is unusual about these studies is that they were undertaken in connection with changes in child protection legislation with the purpose of gauging the extent of the problems and how they were dealt with under the terms of the law. The child protection surveys of Quebec provide a basis upon which to gauge emerging trends involving the identification and the management of child sexual abuse. By identifying gaps in how services are given, this research provides an empirical foundation upon which to develop more effective means of providing protection for these children.

## Sexual Knowledge and Experience of School Children

In addition to victimization and community surveys, a number of studies completed during the 1970s inquired about the sexual attitudes, knowledge and behaviour of high school children. While the studies for Saskatchewan (1979), Saguenay — Lac St. Jean (1981) and Calgary (1981) did not ask students whether they had been sexually abused, information was obtained about when they began to have intercourse, about their attitudes towards sexual behaviour, and in one instance, about their experience with homosexual acts. An exception to the type of information that was collected in the other surveys was a detailed review of the sexual experience including sexual assaults of a small number of high school students in Quebec (1981).

The 1979 Saskatchewan Youth Health survey of 744 high school youths who were between 15 and 19 years-old found that 44.1 per cent said they had had intercourse at least once.<sup>49</sup> Among these sexually initiated youths, 23.8 per cent had had intercourse before age 14, and by age 15, almost half (48.1 per cent) had done so. No information was obtained about the ages of their partners. The results of the Saskatchewan Youth Survey confirm the findings of the larger 1976 national population survey undertaken by the federally appointed *Committee on the Operation of the Abortion Law*. The survey found that among young males, 30.0 per cent of 15 year-olds and 41.6 per cent of the youths between 16 and 17 years had had intercourse at least once, while among young females, 8.3 per cent of those who were age 15 and 18.6 per cent of those who were 16 and 17 years had had coitus. Concerning this discrepancy

between the sexual experience of young males and females, the *Committee on the Operation of the Abortion Law* noted:

In the folkways of young males who socially and physiologically are in transition between childhood and manhood, there is much braggadocio about their sexual potency and their alleged sexual liaisons. It is often thought that to be a man is to be sexually intrepid, and to be seen to be so . . . it is not readily apparent from the higher rate of coitus . . . of young males between 15 and 17 years than females, with whom sexual intercourse occurred unless this happened extensively with older women by younger men . . . <sup>50</sup>

Adopting a broader definition of sexually active behaviour than was used by the Saskatchewan study, the 1981 Calgary Survey of Sexual Behaviour and Attitudes reported that 58.0 per cent of 810 high school students were sexually experienced.<sup>51</sup> About one in six youths (16.6 per cent) had had coitus before age 14 years. The proportion was higher among those who had engaged in other forms of sexual activity, among whom one in four (26.5 per cent) had had coitus. Information was not obtained concerning the ages of their partners or about the relationships between them.

In one of the most extensive reviews of school children in Canada, the 1980 *Enquete sur les connaissances sexuelles des etudiant(e)s* in the Saguenay — Lac St. Jean region of Quebec obtained information on the knowledge, beliefs and sexual behaviour of 658 adolescents comprising 7.9 per cent of 8257 college (C.E.G.E.P.) students who were 17 years and older.<sup>52</sup> Among these students, 43.1 per cent said that they had had coitus at least once since age 12, and 10.8 per cent said they had had a homosexual experience. The experience with homosexual partners varied by sex, with 15.2 per cent of adolescent males and 5.8 per cent of adolescent females reporting that they had participated at least once in these acts. Regarding their attitudes towards pedophiles, the students regarded pedophilic persons as: psychotics or very dangerous individuals (48.2 per cent); middle aged men who fondled children but who did not want sex (28.7 per cent); older men with records of past sexual offences (11.6 per cent); homosexuals (9.9 per cent); and alcoholics (1.7 per cent).

The Saguenay — Lac St. Jean survey found that girls were more knowledgeable about sex than boys. Fewer than three in 10 students looked to their parents as the primary source of information about sex. Other frequently cited and multiple sources of information about sexual behaviour were: reading (23 per cent); school courses (22 per cent); friends (18 per cent); and the media (18 per cent). Based on the criteria of a Sexual Knowledge Test, it was concluded that 84 per cent had inadequate knowledge, that 13 per cent had a weak understanding, and that only three per cent were considered to be well informed. That these students possessed an inadequate level of sexual information was illustrated by the fact that 55 per cent of young males and 39 per cent of young females did not know when a woman's most fertile phase of the menstrual cycle occurred.

The 1981 study of the Sexual Behaviour and Opinions of Adolescents undertaken by *Le Comité de la protection de la jeunesse* is unique among the



Canadian studies of school children because of the detailed questions that were asked about their experience with sexual offences.<sup>53</sup> Because of the forthright nature of these questions, the identity of the high school attended by the 133 students who were surveyed was not reported.

Two-thirds (63.2 per cent) of the students said that they had been the victims of some form of violence or physical assaults. One in 13 had been sexually assaulted (7.5 per cent); slightly over half of these victims (4.5 per cent) had been sexually assaulted while the remainder (3.0 per cent) had been the victims of both physical and sexual assaults. Among the 10 sexually assaulted students, seven were girls and three were boys. Family members had committed six of the offences (against four girls and two boys). Among the incidents which had been committed by other persons, two victims had been attacked by gangs (a girl and a boy), one assailant was an adult acquaintance and one offence had involved a boyfriend.

The Quebec high school students said that they had obtained most of their knowledge about sex from books (79 per cent) and their friends (69 per cent). When they were asked who they would prefer to obtain this kind of information from, the sources that the students listed were: parents (23 per cent); books and magazines (20 per cent); friends (19 per cent); and health workers (18 per cent).

These four surveys of teenagers are alike in indicating that, starting at about ages 13 to 15 years, a sizeable proportion of young males and females have had coitus at least once, and that both the numbers involved and the frequency of these sexual acts increase with age. What has not been documented in these reports are the ages, the sex and the nature of the association with their partners, or the extent to which participation in these acts was voluntary or involuntary. With the exception of the report about the experience of a small number of Quebec high school students, the prevailing assumption in these reports was that these teenagers were experimenting with, or learning about, sex with their peers and that none of the acts involved prostitution, incest, rape or a broad disparity in age between partners.

## Sexual Assault Surveys

The 1970 Toronto rape study of 116 women who were 14 years or older drew its results from assaults reported to the police.<sup>54</sup> The majority of the offences (64 per cent) were acts of violence committed by strangers; these assaults involved the use of weapons (13.5 per cent), physical attacks (32.0 per cent) and threats (37.1 per cent).

Among the rapes that were investigated by the Toronto police in 1970, 36 of the victims were teenagers between 14 — 19 years. No separate analysis was made for this group. The 1970 Toronto rape study acknowledged that there was incomplete information about the actual occurrence of sexual offences. Its



estimate was that between 2.5 and 25 rapes occurred for every one that was reported to the police. The basis for this conclusion was that:

In Canada, the most knowledgeable and most frequently heard 'guesstimate' is that for every ten rapes committed, between 1 and 4 are reported. And a Toronto psychiatrist, whose clients include a large number of rape victims and their husbands, believes that only 1 rape in 25 is reported. Thus, estimates of reporting rates go from a high of 40% to a low of 4%. This means that at least 2.5 rapes and as many as 25 rapes occur for every one that is reported. Reported rapes are only the tip of the iceberg.<sup>55</sup>

The results of the 1970 Toronto rape study were cited widely as the basis to justify the reform of the sexual offences in the *Criminal Code*. Assumptions that were implicit in this review of 116 rapes were that these offences were committed primarily against older teenagers and adult women, that the legal reforms advocated would equally benefit children and adults, and that a single source of information was a sufficient basis to document the general dimensions of these incidents.

In the 1978-79 Winnipeg survey of sexually assaulted women, a random sample of 10 women was drawn from each of the City's 105 census tracts.<sup>56-57</sup> A total of 551 women, or 52.5 per cent of those females who were initially approached, gave information on whether they had been sexually assaulted. The definition of rape which was used included oral, anal and vaginal intercourse. A sexual assault was defined to include the following acts: being kissed against one's will; grabbing the sexual parts of a woman's body; unwanted holding or rubbing of bodies; the tearing of clothes; and attempting to commit rape.

Among these women, 6.0 per cent said they had been raped and 27.4 per cent reported having been sexually assaulted, resulting in a total of 33.4 per cent who had been sexually assaulted at least once in their lives. When unwanted kissing was eliminated, 27.2 per cent, or about one in four women said that they had been sexually assaulted. About half of the rapes (46 per cent) and the sexual assaults (53 per cent) had happened before the victims were 17 years-old. Two-thirds (67 per cent) of the assaults were committed by family members, friends or acquaintances. In about a third of the instances (rape, 36 per cent; sexual assault 31 per cent), the assailants had been under the influence of alcohol or drugs. All of the victims reported one or more long-term psychological consequences resulting from these assaults, including dysphoria (depression, anxiety) fear and anger.

Twelve per cent of the women who had been raped and 18 per cent of those who had been sexually assaulted said that they had not told anyone about these offences before disclosing them to the interviewers. About half of the raped women and almost all who had been sexually assaulted (94 per cent) had not sought professional help after these assaults had occurred. Twelve per cent of the raped women and seven per cent of the sexually assaulted ones had reported the offences to the police. The Winnipeg Rape Crisis Centre had been consulted by 3.0 per cent of the raped women and 0.7 per cent of those who had been sexually assaulted. The other multiple sources of help contacted by

these women included: physicians/hospitals (12 per cent); social workers (12 per cent); psychologists/psychiatrists (12 per cent); public health nurses (3 per cent); and none had sought out mental health services, the clergy or had used emergency hotlines.

The research of the 1978-79 Winnipeg Sexual Assault Survey was drawn upon by the federal *Advisory Council on the Status of Women* to project the extent of sexual assaults against women across Canada. In its pamphlet, *Rape and Sexual Assault*, the *Advisory Council* noted that:

1 in every 17 Canadian women is raped at some point in her life; 1 in every 5 women is sexually assaulted . . . a woman is raped every 29 minutes in Canada — a woman is sexually assaulted every 6 minutes.<sup>58</sup>

In supporting its conclusions about the national occurrence of these sexual offences, *Fact Sheet #4* of the *Advisory Council* noted that since "the Winnipeg incidence rate is not unusual, the results of the Winnipeg survey had been generalized to Canada as a whole."<sup>59</sup> Based on its review, the *Advisory Council* called for the reform of the sexual offences in the *Criminal Code*, a program of public education and a strengthening of rape crisis centres.

While the findings of the Winnipeg survey, the most detailed of its kind for Canada, are not impugned, the experience of 33 women who had been raped and 117 who had been sexually assaulted in one city provide a limited basis upon which to develop national estimates, particularly since these estimates did not take into account the possibility of regional variations in the occurrence of the offences. Until more broadly based findings are available, in relation to sexual offences committed against children and adults, the Committee believes it inappropriate to draw upon the results of a single study for one metropolitan area as though they represented accurately the national experience.

In addition to its extensive findings, the Winnipeg Sexual Assault Survey indicates that a sizeable number of women, if approached sympathetically, may overcome their reluctance to speak and will provide information about these sensitive issues, and that approaching adults may be a feasible means of obtaining an estimate of the extent to which they were sexually abused as children. The procedural difficulties involved in asking young children to participate in a survey include: obtaining informed, and where appropriate, parental consent; the wording of the questions; and the fact that some of the assaults may have been committed by family members, relatives or persons who are responsible for the children about whom information is being sought. The approach adopted by the Winnipeg Sexual Assault Survey, while it is a second best option to asking children directly about their experience, indicates that it is feasible to obtain detailed information from adults about their childhood experience with sexual offences. The principal limitation of this procedure is the accuracy with which the incidents may be recalled, a factor that is partially offset by gaining information about the long-term consequences that may have resulted from the sexual assaults.



The 1979-80 study of 513 cases reported to five Ontario Rape Crisis Centres rejected the official sources of statistics about sexual assaults as misrepresenting the nature of these crimes.

Police reports and classification is not an accurate portrayal of sexual assault occurrences . . . The police appear to believe that large numbers of women lie about sexual assault and must be prevented from pursuing their complaints . . . (there has been) . . . an alarming increase in charges of Public Mischief being brought *against the victim* who reports a sexual assault and is not believed . . . ”<sup>60</sup>

Based on the experience of five Ontario Rape Crisis Centres, the results of the Winnipeg Sexual Assault Survey and the 1970 study of rapes reported to the Toronto Police, it was estimated that “the combined incidence rate of rape and sexual assault is one in four for women living in Canada. Far from being an infrequent crime, sexual violence is a fairly common experience.”<sup>61</sup>

The conclusion that a large number of violent sexual attacks are committed against women came from the study’s findings that: two-thirds of the women (63.4 per cent) had been raped or attempts had been made to rape them; a third (33.8 per cent) had been attacked violently; and well over half (58.5 per cent) had been severely injured. One in 10 of the women (10.2 per cent) said they had been the victims of incest or an incestuous assault. Among the women who had been injured, 15 had been beaten severely; 51 had been burnt, choked or hit; 12 had suffered vaginal or anal bruises and lacerations; and 20 reported other kinds of physical harm.

Many of the victims said they had suffered emotional problems that had resulted from the assaults. Of the 165 cases, for which this information was available, the harms included: trauma up to four weeks (53); symptoms up to one year (29); severe long-term trauma (38); difficulty with or loss of a job (13); major changes in lifestyle (40); and thoughts of or attempts to commit suicide (22).

The majority of the persons who came to the centres were young (53.1 per cent under age 20) women (96.4 per cent), most of whom had been attacked by slightly older males. A quarter of the assailants (27.3 per cent) were strangers, over half were acquaintances (54.0 per cent), and one in six (16.8 per cent) was a family member. Of the children who were under 14, 35 per cent had been raped and 16 per cent were incest victims. One in seven assaults (14.1 per cent) had been committed by two or more assailants. Over two-thirds of the incidents (69.6 per cent) had been in the homes of the victims or the suspects, and the remainder had occurred in public places.

The Report stated that “in the experience of counsellors at Rape Crisis Centres, fewer women than formerly are willing to go to the police and lay charges against an assailant.”<sup>62</sup> Of the 148 females for whom this information was available, 118 or 79.9 per cent, had notified the police.

The Report on the persons who had consulted Rape Crisis Centres concluded that “the results of the Ontario study provide more detailed information



on the experience of sexual assaults, than do other available studies completed so far in Canada.”<sup>63</sup> This objective was not fully realized since few of the completed Canadian studies were cited.

A limitation in the presentation of the Report’s findings was the use of flexible denominators. While 513 cases were selected initially for analysis, the method of analysis was to give information for each item for which findings were available. This procedure serves to inflate results by calculating them on a smaller denominator than the initial listing of the cases that had been selected (513 cases). The denominators used to calculate some of the results were: sex distribution (274 persons); the number of assailants (304 persons); multiple assault cases (425 persons); the location of incidents (207 persons); the type of association between victims and assailants (268 persons); physical injuries (200 persons); emotional harms (165 persons); and the notification of the offences to the police (148 persons). In this respect, it is unclear how information was given for 507 persons who had been assaulted, while the sex of only 274 persons was listed.

## National Opinion Surveys

Two national opinion surveys have gauged the awareness of Canadians about the physical abuse of children by their parents, about whether they believed sexual assaults constituted a serious problem and about their attitudes towards homosexuals and the availability of pornography. While these national opinion surveys did not obtain information on child sexual abuse, the views of Canadians on related issues indicate that these issues are seen as serious problems and that there is a widespread condemnation of sexual deviance.

In January, 1982, the Canadian Institute of Public Opinion (Gallup Poll) asked 1050 Canadians who were 18 years and older; “Are you personally aware of any serious instances of physical abuse of children by their parents, that is, not just something you read about in newspapers or saw on T.V., but that happened to someone you know or someone who lives in your neighbourhood.”<sup>64</sup> One in 10 Canadians (11 per cent) said that they knew a child who had been physically abused by a parent, a rate lower than that in a similar national survey for the United States (15 per cent).

Both national surveys used a definition of physical abuse which did not distinguish between child abuse and the parental disciplining of a child, such as spanking. The focus on physical abuse excluded other forms of harm such as emotional abuse, or the neglect of a child, as well as acts committed by persons other than a child’s parents. For these reasons, the reporting of the physical abuse of children by a cross-section of the Canadian population constitutes an underestimate of the full range of abuses committed against children.

The knowledge by Canadians of physically abused children varied regionally and according to their social circumstances. Fewer persons in the Maritimes (4.4 per cent) than elsewhere in Canada knew of incidents of physical

child abuse. The rates for other regions of the country were: Quebec (12.7 per cent), Ontario (11.8 per cent), the Prairies (9.5 per cent) and British Columbia (12.5 per cent). The reports of known instances of child physical abuse were given more often by persons with higher incomes and with higher education (university education, 14.1 per cent; primary school education, 7.4 per cent), and among households with children (13 per cent) than by adults living by themselves (8.9 per cent). While the national survey of knowledge about physical child abuse provided information on a single issue that was narrowly specified, the results indicate that variations along these lines may occur between regions of the country and according to the social situation of persons from whom such information is obtained.

Between 1975-81, two national surveys focussed on the attitudes of Canadians who were 18 years of age and older concerning a number of issues including whether persons felt they were at risk of being sexually assaulted and their attitudes towards homosexuality and the availability of pornography.<sup>65</sup> The results of the surveys suggest that Canadians held deeply entrenched views about these issues and that there was little change in their opinions during this period. Eighty per cent of the adults in the 1980-81 national survey said that sexual assaults were a serious problem. These concerns were greater among women (89 per cent) than men (71 per cent), and for women, more often voiced by those who were younger or much older, and those having broken marriages and less education. While a majority (70 per cent) said that homosexuals were entitled to the same rights as other Canadians, about an equal number of persons in each survey believed that homosexual acts were wrong (72 per cent in 1975; 69 per cent in 1980-81). The disapproval of homosexuality was more strongly held by men than women, by married than single persons, and by the residents of smaller than of larger centres.

Indicating a growing public concern about pornography, more Canadians condemned its distribution in 1980-81 (92 per cent) than in 1975 (86 per cent). The condemnation of pornography was expressed more strongly by older rather than younger persons, by more women than men, and by more of the residents of smaller than larger population centres. These differences, however, were relatively insignificant compared with the widespread condemnation across the country against the distribution of pornography.

In the 1980-81 national survey, 35 per cent of the respondents said its distribution should be banned completely, 57 per cent said the law should prohibit its availability to youths who were 18 years and younger and only eight per cent advocated that there be no curbs restricting its distribution.

These widely held negative views expressed by many Canadians about the distribution of pornography differ sharply with the widespread availability and consumption of these materials across Canada. This paradox between moral imperatives and what Canadians do in relation to buying these materials indicates that there is much latitude in terms of what is considered to be acceptable sexual behaviour and its description or display in publications. This fact may account for the discrepancy between how Canadians believe the distribution of



pornography ought to be limited and the more tolerant application of sanctions by enforcement and legal authorities. What such surveys do not indicate is whether, in the pursuit of a more vigorous prohibition of the distribution of pornography, Canadians are fully agreed about the types of acts which they condemn in general terms and whether they are prepared to forego certain entrenched rights in order to achieve the desired prohibition.

## Summary

The salient features of the research on the extent of sexual offences include: the consistent reporting of a substantial number of these crimes that are unknown or undetected by public services; the broad range of helping resources that are turned to for assistance; and an imprecision in the identification of the specific acts that were committed, the persons involved and what their relationships were. In addition to these trends, the Canadian research on sexual offences has focussed on the experience of adults. No central co-ordinating mechanism has been established that assembles and makes available these sources of information.

Despite its diversity, there is no doubt that for Canada and elsewhere the number of officially reported sexual offences does not accurately reflect the true occurrence of these crimes. There is a firm and broad consensus on this point. There is no agreement, however, on the size of the ratio between the number of undetected incidents and the number that are officially recorded by the public services.

The research on sexual offences reaffirms the truism of clinical interviewing and social survey research that the way in which information is collected influences the extent to which persons are willing or reluctant to speak subsequently about certain events as well as the types of incidents they are prepared to report. Brief and impersonal contacts in which general questions are answered with uncertainty that the confidentiality about one's responses will be maintained yield fewer replies when matters of sensitive personal concern are broached. In the instance of sexual offences, this procedure would undercover incidents involving strangers. Where more effort has been made to identify the purpose of an inquiry, where more specific questions are asked and where a sense of rapport is established, fuller and more detailed information is given. This approach relies upon the objective neutrality of the interviews. One procedure which has been seldom tried is to ask persons to read questions and to provide written answers while assuring that confidentiality of their replies will be honoured. Most of the differences in the ratios between unreported and reported sexual offences are accounted for by the various methods used in the research studies, some of which are inappropriate to obtain reasonably reliable information about sexual offences.

Much of the research on sexual offences has been completed in recent years, and for this reason, only a modest start has been made in the collation and the cross-referencing of different studies. In the absence of firm informa-



tion gauging the extent to which these crimes occur, a common practice in Canada has been to project the experience documented abroad as though it was indicative of the Canadian experience.

When the victims of sexual offences report these incidents, they turn to a variety of sources for assistance. As a result, the types of information available to each of these sources represents neither the full range of the incidents, nor the full sequence of events that may happen to each victim. While some observers have discounted the value of information that is obtained from such sources for these reasons, this consistent research finding indicates that, in considering the complex issues involved in the occurrence and management of sexual offences, there is a need to draw upon complementary sources.

Typical of this research and of the official criminal statistics for Canada has been the collection of information about offences committed against adults. With few exceptions, most of these sources have not dealt with sexual offences committed against children. Up to the present time, for reasons unknown, the experience of children has consistently been ignored, forgotten or deemed to be unimportant in the documentation not only of sexual offences but also of other types of assaults.

This grave omission is reinforced by the procedures used in the collection and classification of information about victims, suspects or offenders, and the crimes that were committed. In both types of sources — surveys and criminal statistics — only broad categories of sexual offences are typically reported. This practice precludes the specific identification of those sex crimes set out in the *Criminal Code* that specify the elements of these offences in relation to the age, sex and relationships of affinity, positions of authority or trust. Because these rudimentary types of information are consistently missing in the research surveys and official criminal statistics, these sources can be used only as a baseline for documenting broad trends. For these reasons, they cannot be used as basis to review the operation of existing sexual offences in the *Criminal Code* or the potential impact of new legislative proposals.

A characteristic common to most of the Canadian research on sexual offences is that it has been largely the work of single disciplines. This separation has led to distinctive and unrelated bodies of research for police work, community associations, child protection services, school programs, medical services, the field of corrections and social science surveys, among others. Typically, the research that has been undertaken within the purview in one field deals inadequately with the issues that concern the members of other disciplines or services.

In a number of respects, the Canadian research on sexual offences is seriously flawed. While it purports to deal with criminal behaviour, it is seldom informed accurately about the relevant legal issues, even as these pertain to such basic information as the ages and the sexes of the victims, or the types of association between victims and offenders. It is no surprise, then, that these types of studies have often been ignored when legislation is being reviewed or

amended. On the other side of the coin, there has been much reluctance by legal scholars and researchers to seek an empirical basis in relation to the operation of the sexual offences set out in the *Criminal Code*, or concerning the efficacy of different sanctions and sentencing practices. Amendments to this legislation have been made on grounds other than a sufficient documentation of the types of sexual acts that are committed or what happens to the victims and offenders. This approach to the drafting of new legislation is inappropriate when the means are available to obtain more complete documentation.

In his 1968 review of homosexual, exhibitionistic and pedophilic acts, A.K. Gigeroff advocated that empirical research should be the foundation for the review and reform of the law. The Committee concurs with this perspective.

The information exists in the courtrooms and the police services across the country; there is a methodology for analysing and structuring the data in meaningful ways; the technology necessary is widely used in government and industry. What is missing? There is an unfamiliarity with and skepticism over the possible application of scientific methods to what have been regarded traditionally as legal problems. It follows that there is also a failure to appreciate the relevance of empirical studies and to utilize these in the formulation of criminal legislation. There is perhaps an understandable hesitancy over considering a balance sheet on the operation and effectiveness of previous legislative efforts in criminal law, where there is no precedence for ever having done so in the past.

... no simple or single approach to these offences could possibly yield the kind of information one would wish or need to have in order to reformulate them. Each phase of the study presents a different facet of the problem ... (this approach) ... provides us with a means of looking behind the legislation, beyond the case law, and it confronts us with a new dimension of the problem of sexual deviations and the law. It presents us with a picture of the legislation *in operation* ... it enables us to conceive of the problem not on the basis of the act alone but on the basis of the 'event'.<sup>66</sup>

There is an absence of sufficiently extensive and specific information about crimes including sexual offences committed against children in Canada. Strong public effort is warranted to rectify this situation. The value of assembling such information lies in identifying the children known to the helping services, in indicating those who may be highly vulnerable and in making possible an ongoing review of existing policies and programs.

**By focussing on sexual offences against children, the Committee has been able to obtain extensive and detailed information on the relevant legal issues as well as on the wider issues that concern the helping services. The Committee believes that because of its usefulness in putting a wide variety of behaviours under examination, this focus should be retained in the federal government's response to the Committee's findings and recommendations. However, care should be taken to ensure that the Committee's wide coverage of behaviours and protective mechanisms is reflected in the government's response by the involvement of all interested federal and provincial departments and non-governmental agencies.**

In light of its review of the reports of earlier advisory bodies, completed research studies, and the extensive findings documented in this Report, the Committee believes that these purposes as specified in more detail in Recommendation 1 (Chapter 3), would be most effectively realized by the establishment of an Office of the Commissioner having assigned authority to serve as the means to initiate and co-ordinate the reforms which are called for. On the basis of our findings, there can be no doubt about the need to afford better protection for sexually abused children and youths or about the need to seek more effective means of reducing and preventing these offences.



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## Chapter 5

### Personal Accounts

The complex issues involved in sexual crimes committed against children cannot be dealt with by any single source. The Committee therefore obtained information on several thousand known incidents from child protection workers, police, doctors and others in the helping professions. Briefs were received from a number of groups and associations representing the interests of sexually abused children and their parents. In the National Population Survey the Committee asked a representative sample of some 2000 Canadians about their experiences with child sexual abuse.

In order to reach directly children and youths who had been sexually abused and to obtain information on the experience of adults who had been assaulted as children, the Committee placed requests for information in a number of wide circulation daily newspapers across Canada. Comparable requests were carried on a number of regional radio programs and were made to groups representing children and parents which contacted the Committee. In response to these requests, the Committee received a number of written replies and oral presentations. As expected, in light of what is known about the degree of recognition by children of such offences, their deeply held fears and concerns, and their reluctance to talk about such incidents to others, most of the replies came from older teenagers and adults.

Because of the stigma associated with these assaults, even long after the incidents had occurred, most of the persons who contacted the Committee sought an assurance that their anonymity would be respected. This assurance was given. The excerpts taken from their accounts have been altered only to the extent that references are deleted which might identify persons, institutions or the places where the assaults occurred. To assure the validity of the replies, only those accounts that were signed and in which there was confirmation of address are reported.

These accounts reveal that the family circumstances of the persons abused, the types of acts committed and the identity of their assailants influenced the decisions to seek or not to seek assistance, and when this step was taken, which sources were contacted. Most of these persons were reluctant to give evidence against their assailants. In a few of the instances which were

investigated by the police, the fact of their young age was reported to have precluded charges being laid. The accounts show how the decisions concerning the giving of evidence were made. They also document vividly the effects such sexual contacts had on their lives long after the incidents had occurred.

To assist the members of the helping professions to identify and provide assistance to the young victims of sexual assaults, a number of widely distributed check-lists have been developed which detail the signs of these conditions and the typical responses that may occur following an assault. Some of these reactions have been reported to include: irritability; excessive dependency; loss of self-esteem; general depression, regressive behaviour; withdrawal, truancy; academic difficulties; physical trauma; and suicidal behaviour. Following a sexual assault, the young victims are said to pass through three phases which include: an acute reaction; a recoil phase; and a longer period of reintegration.

During the acute phase which occurs immediately following a sexual assault, the reactions of victims are reported to involve disturbances in eating habits and nausea, insomnia and nightmares, tension, headaches, and if a serious assault has occurred, general body pains. The victim's emotional reactions are reported to include: shock and disbelief; fear; guilt; a sense of helplessness; and anger. Many victims are said to develop an absolute distrust of other persons.

During the second or recoil phase, the young victims of sexual assault are portrayed as resuming their usual activities, often in a hyperactive manner. At this time they may appear outwardly to be adjusting well and are likely to deny what happened to them, to withdraw from discussion of their experience and to resent offers of assistance. The third phase involves a process of reintegration and a gradual return to normal activities.

The accounts reported in this chapter which were written by persons who had been sexually assaulted as children indicate a broad range of reactions, most of which do not conform well to the items on the check-lists of the signs and reactions which they are said to experience. For the most part these classificatory profiles have been developed on the basis of the experience of children who have been seriously hurt, who have been assessed, and whose reactions are projected to be similar to those of adult women who have been assaulted in incidents involving threats or force. It is apparent from these personal accounts that the check-lists have not been grounded on the experience of both females and males who are victims. They neither encompass the full range of the types of incidents which may occur nor do they take in account the attendant circumstances in which children may be involved.

The personal accounts show that few of these individuals received any form of guidance or instruction about sex from their parents, schools or other sources. Several individuals strongly advocated that they would have been in a better position to know what they should have done had they known more



about what was being done to them, that it was wrong, and to whom they might have been able to have turned for help.

Since a central concern of the Committee is the earlier detection and the prevention of sexual offences against children, these accounts are grouped into categories reflecting when and from whom assistance was sought. This grouping of the personal accounts is given in terms of: no assistance sought; assistance sought later in life; and assistance sought immediately.

## No Assistance Sought

### *Personal Account 1*

I was an only child of a marriage which broke up when I was four. Over the years, and after the death of my father when I was seven, my mother had several live-in boyfriends (three in all to the best of my recollection). One of these was several years junior to my mother who lived with her for a period of at least six years. At the onset, this was under the pretense of being a boarder, and then gradually, he was presented as being mother's boyfriend and then her husband.

Within a short time of his moving in, this man began what could be called a courting type of relationship with me (then age 11 or 12), taking me out to movies or skidooring. At first, the attention seemed heaven sent. Within a short time, favours were asked in return, starting with petting, undressing, looking, and then, oral sex. I hated being part of this. I made every effort to avoid being alone with him. I recruited some of my friends to rescue me, without explaining why, simply telling them I didn't like him, he was a jerk.

Luckily for me, because of the rate at which the demands were progressing, with actual sexual intercourse being next on the list, the relationship between my mother and this man broke up. I was saved.

I have never shared any of this with my mother. To this day, she and everyone else is — and has been — unaware of my experience, with the exception of my husband, whose support, love and reassurance at the beginning of our relationship, and throughout, has helped me get over those harsh days of my childhood.

Although my childhood experience with sexual abuse was far from being as terrible as many I have heard about since being an adult, I can say, in honesty, that all of this affected my life directly and indirectly. I grew to resent my mother for not protecting me, thus losing the only connection with any living relative.

I felt guilt. Being unable to relieve myself of it with or through anyone, I carried this burden with me. In many ways, I am still insecure and unsure of myself because of these experiences, although time and my husband's love and support certainly have helped to increase my self-confidence.

I am not an expert, but I am relating my thoughts and feelings in the hope that something can be done to help prevent and protect children from having this type of thing happen to them.

1. As a child I felt I was the only one subjected to this type of harassment. Had I been aware that others were too, I might have felt able to share this burden with someone, particularly a helping

adult such as a teacher or a school counsellor. I have seen an ad from the States telling kids that if someone is touching them, to tell an adult, any adult, until someone believes them and stops the attacks. To me, this is one of the best ways to reach kids — to tell them how to get help, and also, to let them know it happens to others.

2. Children should be interviewed by the school counsellor, not at their request, but as a matter of routine, with inquiries being made about their home situation. Too often, kids at the age of 10, 11 and 12 simply do not have the courage or the moxy to seek out a counsellor for help, or even to be aware that help can be obtained through them.
3. As sexual abuse breeds a complete lack of self-worth, and may encourage prostitution, perhaps it would be advantageous to seek out, within the system, be it social service agencies, schools, and other agencies, youngsters who appear to be severely lacking in self-esteem as a clue to their home situation, and thereby, arrest the process before it is too late.

### *Personal Account 2*

I was sexually abused as a nine year-old boy in a fashion that is classic. It took me more than 20 years before I could admit this to anyone. To this day, my parents are unaware that I was victimized. My wife became privy to the information seven years after we began to live together. Only two or three people within my immediate circle of friends are aware of my experience.

The incident took place at the summer residence of my Grade One teacher who used to select four or five of her former inner city immigrant pupils and invite them to spend the summer at her large estate in \_\_\_\_\_. My parents, who had been in Canada for approximately five years, considered this an honour and let my younger brother and me out of our overprotective cocoon, entrusting us to her care, feeling that this was an important advance in our lives. After all, her permanent address was in an elite suburb. Two other children were also invited.

I came down with tonsillitis, during the summer, an illness which plagued me until adolescence. I was bedridden for several days. For some reason my former teacher and the other children were absent for several hours on a particular day. Perhaps it was Sunday and they went to church. At any rate I was left alone in this large mansion with a male house guest. I cannot recall how he came to be there or the duration of his stay. Maybe he was just there for the weekend. Shortly after we were left alone, he came into the room where I was convalescing. He got into bed with me. He began to fondle my genitals. I recall just lying there, possessed by total fear. His biggest concern was whether he was hurting me or not. He inquired repeatedly about this.

I cannot recall this person beyond the fact that he was much older because of his gray hair and stooping posture. He left shortly thereafter. I never saw him again, although his presence has remained with me ever since.

As I grew up my biggest problem with what had happened was coming to terms with its homosexual aspects. My peer group was severely negative towards any homosexual, and so I was truly ashamed of what had happened. When I began to attend university, the milieu I frequented continued to be

totally inimical to any form of homosexuality. So my experience was suppressed again, to the extent of being quasi non-existent in my mind. Essentially, I feared that because I was a latent homosexual, I had somehow invited or caused the assault by that strange house guest.

When I became a teacher, the last thing I wanted to admit in any professional discussion concerning child molesting was my own experience. As a personal anxiety the problem gave rise to active prejudice on my part, because it focussed solely on the homosexual nature of the encounter. In other words, had the adult involved been a female, I probably would have boasted about the experience. In fact, that same summer, I had repeated sexual explorations with a young female, one of the other children who had been invited. Also, each morning we were obliged to witness our former teacher's ablutions which were always conducted in total nudity over the kitchen sink. Both of these experiences concerning females were never hidden from my "gang". In fact, as a young boy, they were a constant source of discussion and "authoritative" information in my peer group.

In retrospect, this was solely due to the strong dichotomy that my friends and acquaintances made in evaluating heterosexual and homosexual experiences. As an adult I feel this is wrong. Our concern for ethical sexual behaviour must be able to come to terms with all aspects of sexuality, and not to discriminate in favour of a specific preference when it comes to taking advantage of children.

### *Personal Account 3*

I am going to relate briefly my story, never having done so before. I'm not sure what has prompted me to write you about something that has been a source of shame and despair all my life.

As a boy of six I was sexually assaulted over a period of months by a male member of the family in whose keeping I'd been placed by my father. I didn't know it was wrong. No one had taken the time or trouble to inform me. Whenever I protested, the threats of a beating kept me docile. One particularly severe beating just before the initial encounter left me dreading others.

Shortly after, I was placed in a relative's care. She derived pleasure by hugging me and then beating the hell out of me in a corner of the basement. Everything from an ironing cord to the coal scuttle was used. Yes, my father noticed the marks and bruises, but ignored them as he had no where else to leave me.

Later, I was made a ward of the Crown and sent to a long string of foster homes. With several exceptions I was subjected to perversions, beatings and child slave labour. One occasion was the Christmas morning I spent standing at the top of the landing with my urine soaked underwear tied around my face. I had been beaten in the kidneys and for some time could not control my bladder. The good people looking after me thought this punishment would "teach me a lesson". So I stood there listening to the carols, hearing the couple's natural children exclaiming over their presents, and hating the world. Another memory concerns the good farmer who worked me 12 hours a day in the spring and summer, thinking nothing of keeping me from school at the age of 13 hauling cow manure from the pasture to the farm by wheelbarrow. The distance was roughly a quarter of a mile and my hands were blistered for months before proper callouses formed.

By age 14, I'd developed a bad stutter and an inability to talk to authority figures. When I was 14, I ran away from "home" hitch-hiking to \_\_\_\_ in



early winter. I had no money, so I stayed and ate at hotels without paying. I was caught and charged, appeared before a judge who: (i) transferred me to adult court; (ii) sentenced me to 18 months; and (iii) made me feel like a piece of shit. That started a pattern. I've tried to break it, but something has always turned up from my past to haunt me and make me run. I'm so ashamed of what was done to me that the words just won't come, and when they do, I still stammer very badly.

I implore you, please recommend that "would be" foster parents be cleared by a psychologist before they are allowed to look after children. At one point I was so in despair that I tried to kill myself. I was 12 years-old.

#### *Personal Account 4*

At the time the ad appeared, I had reached the point of desperation. I felt that no one was capable or willing of sharing the horror of my childhood rape.

I was molested when I was 13 years-old by my next door neighbour. I was not released from his iron grip for at least two years.

Now that I am 22, I find it hard to believe that one person can torture another in such a humiliating and painful way. He felt that if anyone will get hurt, it will not be him. However, I am hurting in one of the worst ways possible.

#### *Personal Account 5*

I don't know how I could have been so naive not to have done something more about what I came to realize was wrong. When I was a boy of about 16, I was homosexually harassed for about half a year.

This man was supposedly an honourably discharged war veteran. I later found out why, but it was only honourable on paper. He was about 28 or 30, went to church regularly and was a pre-med student. He was so ingratiating there was nothing he wouldn't do around the house.

I grew up as the youngest in a family of several children. Emotionally, we were a close and an affectionate family but there was something in our Presbyterian background which precluded physical affection. We didn't hug, touch or kiss each other.

After a while this boarder tried to touch me regularly, to put his arm around my waist, or even to kiss me when he came back from visiting his family. I was disgusted, but assumed he was just different than we were.

Sometimes as a special treat my Mother would make coffee in the mornings on the weekends and we would enjoy drinking this in bed, all in separate rooms. To be sociable, this man said it would be nice to do this together. He got into my bed, starting rubbing my hips and buttocks, tried to kiss me and to put his penis in. My pajamas saved that. I punched him hard enough so that his mouth bled. I got up immediately.

I was too ashamed to tell my Mother. Somehow, I felt guilty as though I had done something wrong. And I knew she needed the extra money.

I told my Mother I disliked him. Could we get another boarder? She said I should be a better Christian like him because he was so good and generous. He tried to do it again at every opportunity, but I never let him get that close. I felt like a stalked animal in a cage.

When I couldn't take it any more, I told my Mother. She was such a devout and good person, she couldn't believe it. She didn't understand. She didn't say I was a liar. Not only did we not know the word "homosexual" - even the idea was unbelievable.

I'd like to think teenagers today are better informed. At age 16, no one had told me about sex. Not believed by my Mother, I didn't know who to turn to. It was too personal a problem to tell a teacher, the minister where we went to church, or even a kindly paediatrician who was our family doctor. It didn't occur to me to go to the police. I wasn't afraid of them. I'd never had any contact with them. I regret now I didn't go to the police so that at least other children who this man abused later could have been saved from what he tried to do to me.

When my older brother and his fiancée were visiting, it just burst out. They made the boarder leave and told his family who lived in another city. I heard later he had been seen by a psychiatrist, but that didn't do much good. He became a teacher and was active in youth church groups so he could find, I guess, more young innocents like me. A long time after I heard from someone who had been in the army with him that that had been the reason for his discharge.

The only time I ever think about it now is when I unexpectedly see an effeminate male, an obviously dressed up "gay", or am touched beyond a handshake by another man. I feel cold and withdrawn. I have been scarred with an intense hatred of any type of sexual deviance or perversion. I am angry that sex which should be giving and affectionate can become twisted and perverted.

I don't know if I would have turned to outside help. I think I might have. What I needed was a formal and complete course in sex education with no holds barred about human sexuality and its deviations. I might then have known what to do.

There is too much hypocrisy about sex education in Canada. Those who oppose it say it will demean children and put ideas of promiscuity in their heads. I reject this. It would give children a shield of protection against sexual deviants, let them know what is acceptable, and what to do when it is not. I hope your Committee has the guts to do something strong and positive so that all children can have that choice.

#### *Personal Account 6*

I was raped by a man when I was a boy of about eight years-old. This man was a friend of the family who was invited to stay at our home while he was employed in my father's business. He was married, had children, and drank alcohol, sometimes excessively. I would guess that he was in his early forties.

Prior to the rape we had developed a sexual friendship, often hugging and fondling each other's genitals in bed. We shared a double bed. I had the greater say in what took place between us, and after initial fears, looked forward to sleeping with him. There was something natural about the relationship. The child is not always, nor totally, the innocent victim of a pervert.

Love to a child of eight is total, immutable and always pleasant. The night I was raped he was very drunk. I will never know why because a child of eight cannot comprehend what could drive someone to drink, or to rape.

The man was a friend, not a stranger. Recently, I was dismayed to view on American television that school children were being taught to distrust all strangers, to refuse to listen or to talk to them, and to run away, scream for help or kick anyone who tried to touch them. The harm caused by such fear-mongering is ultimately worse than the sexual offence it purports to prevent.

It would be wrong to assume that the man was a homosexual. He was married, with children, and seemed to enjoy the company of women. He liked to look at pictures of nude women. When a man sexually abuses a boy, or a woman or a girl, I think sexual preference is seldom a major factor whereas other emotional forces, such as repressed anger or the need to express power, are. I question whether pedophilia is as serious a crime or mental illness as it is made out to be. I do not condone the practice.

I recommend that children be protected from sexual involvement with adults. The age of consent should be lowered to reflect earlier maturation. Sex education should be promoted so that the children of today and the adults of tomorrow can act from enlightenment, not ignorance.

## Assistance Sought Later in Life

### *Personal Account 7*

My father committed incest on me when I was a child. It started when I was about eight or nine until my late teenage years. It was devastating. My childhood was ruined. I always felt people could see and tell what has happening.

I married at 19 and was fine for a couple of years. Then, it all came to the surface. I told my husband and went into therapy for a few years which helped some. I was told to write a letter to my father telling him what I thought of him. I put all that I felt in that letter, but not the incest. I knew my mother would read it, which she did, and I ended up being called a liar and not allowed to go home. I turned to alcohol. I was on nerve pills for years. As a result, I got addicted to both.

I could not forget "the secret". Dad said it was our secret. It ruined my childhood. To this day, every day, I think about it. It is something that can never recede to the back of my mind. I stopped drinking four years ago. With the help of A.A. (Alcoholics Anonymous) and reading all the books I can on incest, it is getting better. Ever since I can remember, I thought of suicide. It is a viable alternative. But my two sons are what kept me alive and a husband who went through hell with me and stuck by me.

God willing, the future will get better. I dreamt for years of killing my father even when he was on top of me. I hated him for breaking the trust between father and daughter. I've always felt old. I want to ask him one question before he dies. "Why?"

This is very hard for me to write. If I can help one child, it will be worth every bit of effort. The person who commits incest should be taken out of the home, not the child. There should be incest treatment centres for the family to go for counselling. If there is violence, the father should be put in jail and have psychiatric tests or he will never stop. If there are other daughters, he will go to them. The mothers either don't care or are very submissive. My mother was quiet and sick. I think she knew, but doesn't want to believe it happened.



### *Personal Account 8*

My husband molested our daughter over a period of years of which I had no knowledge of at the time. I only found out about it when I told my daughter, by then, about 17 years-old that I was leaving her father for good as I could no longer tolerate the emotional abuse he inflicted on me. I was horrified and sickened when she told me about her experiences.

I sought advice from a lawyer for a divorce and for counselling regarding what happened to my daughter. No one took it seriously. Even a doctor we were seeing at the time thought it was funny. He said it was nothing — that some men are more animal-like than others.

I don't care to go on — the whole thing upsets me. I did get my divorce. I won on grounds of mental cruelty.

Can't something be done to these men? If not a jail sentence, then why not compulsory counselling with a psychiatrist? Could not a doctor have the power to turn the information over so that some investigation could be made. I am happy to see on television a program where people go out to the schools and teach children they have rights concerning their own bodies. I would like to see something like this established in our school system.

I don't know if I've made any sense in what I've said. I only know I had to say it. My own sons have no knowledge of what their father has done. It is just a dark, quiet secret my daughter and I share. I never talk to anyone about this. I write in the hope that something can be done, that with your Committee, more people will become aware, and that education will bring about change.

### *Personal Account 9*

Even though I am no longer a child or a youth (I am 40), I would like to report sexual abuse as a child. The first rape occurred when I think I was approximately 18 months-old. I was too little to speak and tell my mother. A second rape occurred when I was between two and three. From three to age seven, I was raped routinely, especially in the summer when I could not be kept in the house. The rapist was my father.

Until age 36, I had no recollection of my childhood. Growing up on a farm, I had assumed until then it had been a happy one. I knew my father as a good man, religious and a leader in our small community.

When he died, freeing within me the terror and the rage against him, I started experiencing serious problems towards men. If any man showed any interest, I would "freeze up", be paralyzed inside, and unable to move or speak.

I am from a family of 12 children, or 14 I should say (two having died in their first two years of life). I am quite sure that at least six of my eight sisters went through what I did in their childhood. There are enough signs to prove it, although some have no recollection of it. Two others have, but they will not speak of it. It is also possible that one of my brothers had also been abused. And from comments from my mother and an older sister, at least one of his sisters had been abused by my father. This is based on a conversation between the two while my father was on his death bed asking forgiveness for what he had done to her. This sister is now a nun. My father was known as a "good" Catholic.

After five years of primal therapy (re-experiencing one's childhood), I am just beginning to recover my soul which had gone into hiding to survive the trauma. At age six, I had suffered a stroke (I wanted to die), but I survived. I had to relearn how to speak and to walk. I forgot everything prior to that period. From age six to 36, I functioned as an average neurotic having no idea of what my past had been. During the last four years, I have been able to reattach the child in me to the functioning adult.

### *Personal Account 10*

I was raised to be a "nice" (passive, quiet, obliging, helpful, pretty) daughter. I trusted others and was obedient in letting others do as they wished. I hated myself as a result, without really knowing why. It's a terrible position for a child to be in, especially with sexually inhibited parents. Sex, then, simply wasn't "discussed" - it wasn't for me. A subject of punishingly cold anger at home.

I was subjected to rape and sexual violation from the age of three to about 12 by:

- an in-law of one of my parents who was a pharmacist when I was 3, 11, 12;
- an elderly (and nearly blind, white-caned) neighbour when I was 8; and
- another neighbour's teenage son when I was between 10 and 12.

As soon as I knew about menstruation, conception and male and female sexuality, I was able at the age of 12 to stop all of this abuse myself by:

- refusing to visit the neighbour's (teen of 17) son's home again;
- asserting and saying "No" and meaning it and knowing why, finally; and
- telling a parent of the in-law's abusive ways.

I finally had the words and the concepts to tell what was occurring. It's great they have dolls now so that young children can get their plight across to caring, informed and believing adults. When sex is not discussed in the home, a child has no way of knowing that people can understand the feeling that "it's only happening to me" and all the fear and guilt that being in that position entails.

When is it O.K. to touch or not to touch? What about play, tickling, hugging, kissing . . . ? Everything normal and healthy becomes contaminated. People you once trusted, you come to doubt. "Don't kiss me, don't hug me, leave me alone". Yet I craved all of these forms of loving which were offered to me. This feeling cuts off love and stops emotional growth. Everything normal becomes distorted and tainted.

Based on my own experience I believe:

- Children should be informed about sex and sexuality from the earliest age so that they can tell a parent or a guardian of any "unusual contacts".
- Parents must be as aware and cautious as they can be, especially when entrusting their children to the care of relatives or friends. It can happen with anyone, as I discovered, and in the "best" of families.
- Parents, schools and even family physicians should discuss this openly. They warn children not to take candy or car rides from strangers. They should be able to tell them about body-abusers/touchers, and in a positive manner, so that children will not feel "bad" about it and will feel free to talk about it immediately without negative after-effects.

- I believe loving treatment is needed for victims. Returning the victims to society without treatment may “sentence” them instead later to a mental institution, a life of reclusiveness, or a permanent feeling of “not-OKness”. They must feel “OK” about themselves and understand what happened so that they can go on with their lives in a healthy, self-loving manner.

Writing this has been good for me — healing. I felt I could turn something negative into something positive to help others. When I began to write I felt very negative. It has taken me a decade to get to where I am now and an enormous amount of energy from “loving caregivers” when I have been in therapy.

### *Personal Account 11*

I was sexually abused by my father. As far back as I can remember (to about age 11), I had to touch my father on the penis. It was a nightmare come true. My mom and aunt went to bingo, while my cousins, sister and brother played outside. My father made me stay in and watch T.V., lying down with him. I fell asleep. He undressed me and started touching my vagina. I woke up when he had his fingers inside me. It hurt. It stopped after this one time. Then around the age of 12, he started again; this time it seemed worse. He would always come into my room, wake me and tell me to go downstairs to keep him company. I didn’t know who to turn to. I didn’t think my mom or anyone else would believe me. I was afraid.

The first time he had intercourse with me was when I was taking care of my little brother, and everyone was out. He said “this won’t hurt”. He lied. The pain was undescrivable. This happened about three times in two years. It didn’t happen as often as he wanted because I said “no”, and then, he made me give him a blow job. I was always too scared to tell anyone.

The last time he had intercourse with me was the day I came back from summer camp. No one was home when we got there so he said he had built something in their (mom and dad’s) room. “Come and see”, he said. I went there. “You have to lie down on the bed to see it”, he said. I lay down on the bed and he laid down beside me and gave me a kiss on the forehead. I didn’t think anything of it. He said, “you must be hot with all your clothes on”. I said, “no”. He didn’t take that for an answer. He started undressing me. I started to cry. He didn’t care; he never cared. I guess I went into a state of shock or into a daydream. He was forceful during the intercourse. I started bleeding afterwards. He made me so mad at him, I started crying when I saw my mom.

About two months after this incident, I was talking to a friend in one of my Grade 9 classes. I told her I was getting beaten up at home. She told me to phone the operator and ask for Zenith 1234. I had told this person (a stranger) that I was getting beaten up, and then, I was being sexually abused. They wanted to pick me up that night, but I was babysitting.

After I finished babysitting I phoned my sister to come and pick me up. We walked home and I told her what I had done. She said she went through the same thing. The next day a worker phoned and we met her at a park. My sister talked to her for an hour; they argued. We went to the police station and we had to give testimony to a male policeman, which made it more difficult. I was giving my testimony for an hour or two. My sister was in there for over four or five hours.

I was put in a receiving home with my little brother. He hadn’t been abused. He stayed with me for about two or three weeks. I was in there for



almost two months. I chose to live with a very strict and religious person. She had her own son and four foster children — two little girls, a 13 year-old and me. I lasted there for five months.

I got kicked out because I came home drunk as a skunk at 2:00 in the morning. I had a child-care worker who brought me home. My foster-mother and the child-care worker argued for an hour or so while my sister took care of me. The next morning she told me I had to go somewhere else to live. I didn't mind at all. My child-care worker was phoned and was asked if she could take me in. I have lived with her for almost three years.

### *Personal Account 12*

When I was about four, I remember being at a picnic. I was cuddling in my father's arms on a blanket and he started rubbing me between my legs. After that, we used to fondle each other often.

I didn't realize it was wrong until I was about nine or 10. I felt alone. I had a teacher who was special, but I couldn't tell her. Once my mother found us French-kissing. She told us to stop and not to do it again. She knew what was happening, but she never let on.

I used to try to get away when he was home. It went on when we were in the car and on weekends. We only had sex once. That was terrible. When I was 14, I told our doctor and swore him to secrecy. He was disgusted. When I got home, I found the doctor had called my mother. My mother confronted my father and me. He denied it all. I broke down. My mother believed me. We never told my brothers then. They continued to live together, but they did not share the same bedroom.

Until I left home at 18, it still happened sometimes. I didn't want to break up the family. My mother was very moral about sex and had been physically abused as a child. She heard men's stories about sex when she worked at a plant. For her, sex was just to have children. I didn't know their marriage was weak. I thought I was helping to keep it together by giving my father something my mother couldn't. Two years after I left home, they separated. I still write to my father and sometimes see him at Christmas. He doesn't understand he did anything wrong. He was an electrician and has an IQ of about 80. I'm a teacher, so I know that now. I hate him. He's a weak, rejected man. But putting him in jail wouldn't do any good. He needed treatment.

I can't get close to my mother. I feel sorry for her. She knew, but she never understood. It was another world for her. She's lonely and a broken woman. Her safe world came apart. She doesn't like me or how I live. My brothers are taking care of her as she gets older. They know now and reject my father.

After I left home, I was sexually promiscuous. I had sex with a lot of men. I still enjoy it often. But I can't get close as a friend to men or women or learn to be soft and affectionate. I'm aggressive with other people and having sex. I still have my guard up in case I'll be hurt. Men want to use women and dominate them like my father did to me. Many men want to have sex with me. I'm careful who I go with. I've lived with several men, one for 6 1/2 years. It broke my heart to break up with him. He was too nice, too conservative about sex.

What my father did to me is like it happened yesterday. It still hurts deeply. I'm a strong and intelligent woman. I've read all about incest. Writing about it helps some. But it never leaves you.

I went to a psychiatrist five years ago. He said I wasn't ready, that he couldn't help me. I'm having psychotherapy now. I'm getting to know myself and realize what happened. Someday, I want to get married and have children.

When I was younger, no one could have helped me. I didn't trust anybody. I wouldn't have told a teacher. Trying to tell pupils about unwanted touching is no good. Or distress lines. Or distress centres. I knew it was wrong, but I couldn't ask for help. Social workers are useless. I've talked with other incest survivors. That's useless too. All they do is talk about it. You don't get anything from that.

What I really needed as a child was a warm and loving family. That's what all children need. It would stop incest.

## Immediate Assistance Sought

### *Personal Account 13*

I am a mother of a four year-old girl who was sexually abused. It is an experience I will never forget. I hope to God my daughter will.

The problem is that I don't know when it happened and that makes me feel responsible for what happened. I was getting my daughter ready to go out; she was talking away, but I wasn't paying much attention until she said "and he did this to me". She was playing with herself. I started asking questions. I asked "when did it happen?" She couldn't tell me. Where did it happen — "in the bed in the basement. He took my clothes off, washed me, and played with my private area." This man is married and has two girls. His five year-old daughter plays with mine.

It was reported to the police. They came and talked to us. They believe what happened and were very concerned, but there wasn't much they could do but talk to him because of my daughter's age and there was no witness.

I don't think a four year-old could make up a story like this. She doesn't know anything about sex. She doesn't read, hear or see anything like this. To me, a child between the ages of three and five will tell the truth more likely than an adult would.

When I questioned her why she didn't tell me before, she said he told her "don't say anything to your Mommy". Then she started to cry because she thought she was going to get spanked. He has gone and told some of the neighbours that I pressed charges against him. He thinks it is a big joke. What gets me upset is when things like this happen is that the same old excuse is used. They can't help it. "THAT'S NO EXCUSE". It doesn't give them the right.

They can get help and when they do, it is all forgotten. But what happens to the victims who can't forget? I don't know what can be done. The criminals have their lawyers to protect them, but who protects the children?

Why is it so hard for the police to do something? In fact, I feel sorry for them. They know these people are guilty, but the courts will not take the word of a child. It was suggested to us by the police that our children should not leave the property. How do you explain to a child that she can't play with her friends unless they come over to her house, and that you are doing it for her own safety and not punishing her?

#### *Personal Account 14*

My eight year-old son was raped by a 21 year-old man. This man is a brother of one of my daughter's friends. In a matter of 20 minutes, my son was lured into his place and raped. They live only two buildings from us.

I won't go into the tears, the rage and the heartache my family has gone through due to this act. My son was not beaten up, but he was raped. We took the proper steps. The police arrested the man. We took our son to the police station for his statement and then took him to the hospital to have tests done and pictures taken to make sure he was alright. This is something an eight year-old boy should never have to go through.

I have found out from this experience that a victim hasn't any rights. Once the man was arrested and pleaded guilty, there was nothing more I could do. I made several calls to legal aid, the police and the victim's protection office, but there wasn't a thing I could do. I got through to the Crown prosecutor because I couldn't understand how this lawyer could speak on our behalf when he had never spoken to us. I wanted the judge to know how I felt, what my son had gone through and how this crime affected our family. The prosecutor was very understanding, but he said it was up to the judge alone for sentencing. He said in crimes of this nature they feel the family has gone through enough without being in the court on the sentencing day. Believe me, I know we went through enough, but you feel so helpless. I still feel a judge should hear the parent's viewpoint.

The bottom line is — I have to wait and see what this man will get. He is now undergoing mental tests to see if he is sane.

In my opinion the laws should lean more on the victim's side. After all, we are the innocent ones. We didn't bring this situation on ourselves. He did. The guilty one has his lawyer to talk to. What about us?

We teach our children to be careful, not to talk to strange people, to let us know where they are. You can't keep them in the house at eight, 11 and 13 years of age. My faith in people has changed a great deal. I try to feel like myself again, but it is difficult at times.

I hope my letter will help in a small way. Our children are precious. We must find a way to protect them from these terrible acts.

#### *Personal Account 15*

Both of our female children have been sexually molested by an individual who was a family friend. We speak with first-hand knowledge of this problem.

The support offered by the city police was excellent, but similar support in the outlying community where the offences took place was sadly lacking. The fact that the offence was committed in another jurisdiction raised problems in dealing with the offender. The city police were eager to intervene, but were unable to, and those able to, were apathetic. We were ultimately placed in the position of having to confront this individual ourselves with no assistance from the police or health professionals.

This apathy was caused in part by our unwillingness to lay criminal charges against this individual. Of all the problems concerning sexual abuse, we feel most strongly about the inability of the system to deal in any way whatsoever with the individual who has committed the offence. The police were unable to lay charges without interviewing our daughters. They said



that even had they done so, the children's testimony would probably be unacceptable in court. Not wishing to expose our children to further trauma, we refused permission for the police or the social service agencies to interview them.

If we were to press charges, we must expose our children to the judicial system, thus seriously aggravating the offence with a negligible chance of a successful action. In refusing to accept these risks and lay charges, any hope of dealing with this sick mind was effectively dashed. In this current situation, society has unwittingly adopted a very permissive attitude. Sexual offences of this nature should be taken out of the realm of criminal law where the rights of the accused must be so vigorously defended. It would seem more desirable to place the accused in a position where he was at least forced to discuss the offence with professionals who are skilled at dealing with this sort of issue.

As the situation stands now, only a small minority of the adults who sexually molest children come in contact with the authorities. By removing the threat of prosecution, perhaps it would be possible to approach and deal effectively with these diseased individuals.

### *Personal Account 16*

My children are seven and nine now, and they're lucky. About four years ago, my son, then five, came to me one morning not realizing that he'd tried something bad and said that my brother had tried something with him and his sister the night before. Luckily, he was unable to complete the act with either of them. With them having been so young, they were able to forget easily.

At the time I was very mad and went to the police about it. One officer talked to my son and then he went to talk to my brother. Of course, he denied it. They couldn't do a thing. All they could do was to warn him. There was a lot of hurt and anger in our family for a long time. It was very difficult to put it behind me.

My brother moved to \_\_\_\_ a year ago and lived with another brother for awhile. Suddenly, he moved back here and we never thought much of it. My mother was in the hospital for an operation and my thoughts were elsewhere. When I phoned my other brother to let him know how Mom was, he asked what reason our brother had given for moving back here. I told him he said there was no work there. He said that was a lot of crap, but that it was too much to go into over the phone, just that our brother was never allowed in their home again. I knew right then what was wrong. I asked him if it was what I thought it was. He said "yes". When his girlfriend got on the phone, she asked how I knew and I said "experience".

But the worst problem I had was the guilty feeling. I had never told my brother in \_\_\_\_ what had happened because I'd told a couple of people close to us who had kids that he was friends with, but they hadn't believed me. So I kept my mouth shut and hoped he'd be scared off. My kids forgot. But my brother's one daughter is 10. She was old enough to be terrified of my brother. She won't forget what he tried to do.

It's hard to live with the guilt, knowing it could have been much more serious for her. I know I'm not really to blame. My brother is sick. But it makes me so angry to know that nothing can be done to or for my brother. Nothing, that is, unless he's caught in the act. To think that he'd have to

actually hurt a small child before someone could lock him up and pick at his brains and find out why he's that way really makes me mad. What can I do?

My brother has moved to \_\_\_\_ and has a job. But he'll never change. He really doesn't think he's done anything wrong. He refuses to admit to a thing. The worst of it is, who's to say he'll never turn into another Clifford Olson? When my brother was in his early teens, he was caught with a younger male cousin. My father used a strap on him until his upper legs and rearend were black and blue. Maybe that just intensified the problem and made him crave the forbidden. Who really knows?

All I know is he must have had a problem early in life. He should have got help at the first incident. But not many people knew about it.

But there has to be an answer. There just has to be.

### *Personal Account 17*

I found out in 1980 that my brother, age 20, was using my four-year old daughter for his sexual desires.

I told the police and I took her up to the \_\_\_\_ Hospital where they checked her out and said no damage was done. After the first court appearance, my daughter was still getting burning feelings in her private spot. I then took her to another hospital, \_\_\_\_ Hospital, where she was seen by a gynecologist for the first time. The doctor told me she had a swelling and bruising and he had had his penis in her at least two inches.

Later, I found out from the hospital that my brother had venereal disease. That is where my daughter's burning came from. I asked the police to seize the reports from the \_\_\_\_ Hospital. They said it could not be done because we had already been to court.

Well, he got off. I am no longer living in \_\_\_\_, but in a small village. Now I find that my brother is visiting and hanging around \_\_\_\_ to try to talk to my daughter. My father lives here too, but my brother never bothers to visit him. Now he's hanging around, and God only knows, what he wants with my daughter.

My daughter is now getting psychiatric help at the \_\_\_\_ Hospital. I am living common-law and I can't afford it. But so far, she is doing really well and now he comes back.

I don't think it's fair. Why do child rapists get off scott-free? They don't go to jail. They don't get professional help. Nothing. I want to know why. My brother should have at least gotten professional help.

I feel that the laws for rape, child molesting and even gross indecency, and all other things like that, should be strict. People like my brother should pay for their crimes.

My little girl is suffering and will always have it on her mind. Now that he is loose, what about other children? What about kids who walk to school, the store or are playing in the playground? He could try it on any of them. And he would not be punished for his crime. It is not fair to the children.

I urge you to make stiffer laws so our children can live in a safer world. Can you help?

## Pathways to Assistance

While the persons who wrote to the Committee are not representative, as they volunteered these accounts, of all young victims of sexual offences, their experiences reflect some of the trends common to the incidents of this kind. What is unusual about these accounts is not only the courage of these persons in relating events which hurt them deeply, but their ability to recollect these episodes as though they had happened yesterday. Their value is that they have been told by the victims in their own words.

Most were young children when the assaults first occurred. Their average age was about six years; three in four were girls. All of the assailants were adult males. Half of the offenders were members of the family or close relatives. The remainder were acquaintances and family friends and in one incident, a stranger was involved. All of the assaults occurred in private places, usually either in the home of the victim or the offender.

The assaults committed against these children included fondling, sexual molestation, homosexual acts and in about a third, genital or anal intercourse. Two-thirds of the children did not immediately report these assaults to anyone. When they were older, about a half of the victims told physicians about these acts. The remainder never consulted any type of helping service. Some later confided to their spouses what had happened to them as children; a few had told no one before contacting the Committee.

Why did so few of the young victims seek assistance? These persons, or the parents of children who had been assaulted or molested, explain in their own words why most of them did not even tell another family member. Two-thirds were too young when these incidents occurred to know that the sexual contacts were wrong. If they did know, then they were too ashamed about what had happened, or they were too afraid of their assailants to tell others. Among the few who later told a parent about these incidents, all were initially disbelieved. These accounts indicate that in order for a child to give evidence, the pre-requisites for this step to be taken are the recognition that an act was wrong and the strength to overcome the fears or the shame involved in telling other persons about these acts.

On the basis of the accounts it appears that there is a greater likelihood of a child telling a parent and of initiating a police investigation in situations in which the assailants either are less intimate family members or are friends, neighbours or acquaintances.

The police were contacted in about a third of these incidents of sexual assault of children. When the police were contacted, the sexual contacts stopped completely. For these children, police intervention provided a clear-cut and positive outcome. There is no indication that the investigations by the police had harmed the young victims. In one instance, the parents of two daughters had been unwilling to lay charges to preclude their children from experiencing more trauma. While the work of the police in different parts of



Canada was endorsed by the persons who had sought their assistance, much frustration was expressed about the inadequacy of existing laws to accept the evidence of children, about the treatment of offenders and about their punishment.

There were no witnesses to any of these incidents. There was only one instance in which a medical examination found evidence of physical injury and venereal disease. This evidence became known only after the court had dismissed the case. In other instances, the ages of the children or their perceived inability to give evidence were the reasons why charges were not laid. With the exception of two cases, none of the assailants had been contacted by child protection services. Also, none of the assailants had been convicted. Psychiatric help had been provided for only one offender.

The accounts document the difficulties involved in determining the nature of the potential long-term effects of sexual assaults. The victims remember the assaults with anguish and anxiety, and in some instances, with a burning anger. One young male child had been physically injured and a girl had contracted venereal disease. About a third of the victims reported that much later in life they had experienced behavioural disorders or that they had received psychotherapy. It is unclear whether these problems constituted pre-existing conditions which may have been exacerbated by the sexual assaults, whether they had stemmed from them, or whether they had been influenced by events occurring later in their lives.

What stands out sharply in these accounts about child sexual abuse is the sense of helplessness, uncertainty and ignorance about what the victims felt they might have done when they had been assaulted as children. Most did not then know to whom they should have turned for help. When the assault was committed by someone whom they knew well, they felt constrained from telling even other family members. Several of the children did not know that the sexual acts which had been committed against them were wrong.

Few of the child victims had been examined medically. None voluntarily sought out social workers, teachers, the clergy or community agencies immediately following the assaults. The victims either did not know about these services, or their personnel were not sufficiently trusted by the children to confide these experiences to them.

**The persons who gave accounts to the Committee did so to provide a better understanding of how children in the future might be more effectively protected from sexual assaults. Most of the persons said they had not understood what had been done to them, and that if they had known, they might at least have had the option of seeking help. They make a strong and eloquent appeal that in the future Canadian children should have this option that could be brought about by a greater public and professional awareness of all aspects of child sexual abuse.**

The personal accounts highlight the profound nature of the complex issues that are involved in child sexual abuse. The experiences that are recalled by these persons are confirmed by the statistical findings obtained in the surveys which were undertaken by the Committee.





## Chapter 6

# Occurrence in the Population

The findings of the National Population Survey constitute a baseline for estimating the extent to which sexual offences have been committed against Canadian children, youths and adults. **The main findings of the survey are that at sometime during their lives, about one in two females and one in three males have been victims of unwanted sexual acts. About four in five of these incidents first happened to these persons when they were children or youths.**

The National Population Survey drew upon the experience of a representative sample of Canadians living in all regions of the country. The size of the sample was larger than that usually drawn in national surveys. With respect to the survey's sampling error, the chances of the sample not being representative were between the statistical confidence levels of 0.02 and 0.03 which means that if repeated comparably drawn samples of the population were undertaken, then similar results would likely be obtained from between 97 and 98 per cent of the samples. For most national surveys, the 0.05 level of statistical confidence is adopted.

Until more comprehensive and detailed survey findings are available for the Canadian population, the Committee accepts the results of the National Population Survey as a basis upon which estimates may be made of the occurrence of sexual offences against Canadians. This survey, the first of its kind for Canada with respect to the detailed nature of the questions asked, indicates that sexual offences are endemic, that a significant number of both females and males have been victims of these acts, and that children and youths are disproportionately at risk.

The National Population Survey was undertaken to obtain information in relation to issues specified in the Committee's Terms of Reference. The Committee was asked to examine: "the incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general". The Committee was also asked to consider "whether such offences are likely to be brought to the attention of the authorities" and "the relationship between the enforcement of the law and other mechanisms used by the community to protect children and youths from sexual abuse and exploitation".

On the basis of its review of completed community surveys of sexual offences against Canadians, the Committee found that there was insufficient information available in these reports dealing directly or in sufficient detail with the issues specified by its Terms of Reference. As a result, the Committee undertook a National Population Survey of Canadians who were age 18 years or older. Information was not obtained directly from children and youths themselves. To have collected such information from children would have entailed obtaining parental consent, which in some instances, would have involved seeking permission from family members or guardians who may have committed sexual offences against minors. While it is recognized that the findings of a retrospective analysis may be affected by an erosion in the ability of persons to recall events, for this reason, the results obtained are likely to be an underestimate rather than an overestimate of the occurrence of incidents of this kind. Because of the intensely personal nature of these acts, the Committee found in its meetings with a number of victims and on the basis of its other surveys that most victims clearly and vividly recalled these incidents.

Elsewhere in the Report, findings are presented from the surveys of cases of sexually assaulted children and youths known to the police, child protection services, hospitals and correctional services. The findings of these surveys describe in detail the circumstances of victims, the types of sexual acts committed and the services provided by these agencies. The results of the National Population Survey show that these public services dealt with only a small fraction of the number of the children and youths who had actually been sexually abused. The principal reason for so few cases being known to these services is that most victims of sexual offences did not seek their assistance, and when such help was sought, they turned primarily to physicians, the police, and to a much lesser extent, social services including child protection workers.

## Design of the Survey

Prior to the implementation of the national survey, an initial draft of the questionnaire was pretested in a pilot survey. On the basis of previous research involving the reporting of sexual offences by victims, it was concluded that how such information was obtained affected the types and completeness of the replies received. Many persons are reluctant to discuss these sensitive personal matters with strangers. Such information is only likely to be volunteered in situations where either an informant completely trusts another person, or where the anonymity of the respondent is assured. In order to minimize the influence of external factors, the persons selected in the National Population Survey were asked to complete the questionnaires themselves.

Before the survey was undertaken in each of 210 communities across Canada, a supervisor of the Canadian Gallup Poll spoke with the local Chief of Police or the Police Public Affairs Officer. At these meetings, the purpose of the survey was outlined, a copy of the questionnaire provided, and the police force was asked for its co-operation in the event that questions were raised

about the survey's authenticity. In undertaking the survey, the instructions given to the staff of the Canadian Gallup Poll were:

"Introduce yourself and hand your identification card to the respondent. Then say, 'this letter will explain our current study, would you read through it please'. Hand the questionnaire which is in a sealed envelope to the respondent. Have your respondent complete it - and seal it in the enclosed envelope."

In the letter given to each person asked to participate in the survey, he or she was informed that:

"Because of their personal nature, we ask you to answer the questions without the involvement of our interviewer, who has not seen the questionnaire, and who will not be able to discuss them with you. The subject matter is of serious concern today. It is one on which little or no information is available.

The information requested will be held in strictest confidence. There is no place on the questionnaire to identify yourself, and we ask that you do not do so. Your own information will be anonymous.

When you have completed the questions, there is an envelope inside for you to seal your answers. All questionnaires will be returned to the Canadian Gallup Poll, still sealed.

If you have any concerns about the authenticity of this survey, please contact the Police Force Public Affairs Office at (address and telephone number given)."

The National Population Survey was undertaken between the last week of January and the first few days in February, 1983. Following its completion, a story was carried nationally about the survey by newspapers and radio and television stations. Because of the timing of this news report, its publication did not affect the collection of information for the survey. In the city where the story was initially reported, the local newspaper noted that although "some very explicit questions" had been asked in the survey "the police have not received a single complaint". Of 2135 persons contacted, 13 refused to take part in the survey and 114 returned incompletely filled out questionnaires. The response rate to the survey was 94.1 per cent (2008 of 2135). The staff of the Canadian Gallup Poll conducting the survey reported that, as illustrated by the reports cited below, most persons from whom information was obtained took time to review carefully the questionnaire and that they gave serious consideration to the issues raised by the questions asked.

- *Male*. After reading the letter, he was eager to participate. He thought the subject matter was of great concern. Quite interested in the results.
- *Female*. Thought the subject was important and concerned about it. She said it reminded her of taking an exam.
- *Male*. Sat on stairs using my clip board to fill in the questionnaire. No expression, no comments. At the end, said he was pleased to have been able to do it.
- *Female*. After opening an envelope and reading the introduction, she commented that it might be a bit racy for an older person. At the beginning,



she sounded surprised, but enthusiastic. At the end, she carefully checked back each page.

- *Male*. Wanted me to leave it with him before he had read the letter. Explained that that was impossible. After reading letter, was a little reluctant; I pointed out he could phone number on the letter. He was going to do that, but he changed his mind and decided to do the survey. He sat down at dining room table whilst I sat away from him in living room section of the room. He read first page, then got up and took questionnaire into kitchen so I was not able to observe him. He seemed subdued when escorting me to the front door. He talked about the weather, but wished me good luck with my survey.
- *Female*. Wanted to talk at first. She said she was against “those terrible magazines, topless bars, and girls degrading themselves”. I had to interrupt her, telling her I couldn’t discuss anything. Satisfied expression on face while doing it. When she said goodbye, she said, “very good this is being done”.
- *Male*. Wanted to fill it in later and mail it, but agreed to do it. Asked part-way through, if women were also doing the survey. No comment or change in expression when I affirmed this. His wife came in and asked what he was doing. He handed her the letter and got up off the sofa and went to a chair. When his young son came in, he closed questionnaire. His wife got up and took her son out of room. His last (and only) comment was, “good idea, but I hope people tell it like it is. Will you get enough out of it? I hope you aren’t putting down people’s names and addresses”. I assured him no record was being made. He looked relieved.
- *Female*. Seemed embarrassed and was fidgety, during filling out the questionnaire. When her son (young teens) came into room, she told him rather curtly she was busy and to sit down and talk to me. Pink face, didn’t look at all comfortable, but made no comments, other than a question as to anonymity of persons and locations.
- *Male*. He never looked up until he was finished. He seemed to do a lot of writing at the end. I asked if he minded doing it. He replied, “No”.
- *Female*. Opened envelope. Then she laughed and said, “You are interviewing men also?” I replied, “Yes”. Then she got right down to the questionnaire. I noticed she swallowed hard during the middle of the questionnaire, but she kept on going.
- *Male*. Started reading and didn’t look up. During interview, he wanted to be assured that I was not keeping a record of his address or I had any way of identifying him. I assured him I wasn’t. He also asked if females were being interviewed. At the end of the interview, he kept flipping the pages back and forward.

Among the replies received from 2122 persons, nine of 114 who did not complete the questionnaire wrote negative comments about the purpose or contents of the questionnaire. These persons did not complete the section of the questionnaire requesting social and demographic information. Some of the reasons for not participating in the survey were:

- “Your questionnaire is pornographic. Most of this questionnaire isn’t applicable to my experience. Some people (older than I am) would have a heart attack at these questions.”

- “This survey is a sheer waste of taxpayer’s money. It could be better utilized in many better ways than on this garbage.”
- “I am sorry such important issues have had to be typed, put in print, consuming tax-payers money. All through it, there is a lack of concern and indifference. It is time Canadians got things together and began to live decently.”
- “I do not like loaded questions. You only get the answers you want to hear, so piss off.”
- “I refuse to answer this questionnaire. It’s stupid.”
- “This is too personal. I am a very faithful wife and also believe my husband is too. I think our sex life is not anybody else’s business, but ours.”
- “This is a waste of paper. Why don’t you - please - mind your own business.”

Despite the fact that they were asked direct and explicit questions about whether they had been victims of unwanted sexual acts, most of the persons contacted agreed to participate in the survey. Many of them took time to add written comments. The completed questionnaires were sealed in envelopes by the persons participating in the survey, returned to the survey’s staff, and subsequently, were forwarded to the Canadian Gallup Poll where the replies were coded.

## Extent of Occurrence

The 2008 persons in the National Population Survey were asked whether any unwanted sexual acts had ever been committed against them and how old they were when these incidents had occurred. Preceding these questions, definitions were given of “the sex parts” (e.g., vagina, penis, crotch, and anus) of a person’s body. The questions dealing with unwanted sexual acts elicited information about: exposures, threats, touching and attacks. The questions asked were:

- Has anyone ever *exposed* the sex parts of their body to you when you didn’t want this? The reply categories were: never happened to me; and circle as many as apply of penis, woman’s crotch, breasts, buttocks, nude body, and other (specify).
- Has anyone ever *threatened* to have sex with you when you didn’t want this? The reply categories were: never happened to me; and a listing of the number of times these incidents had occurred.
- Has anyone ever *touched* the sex parts of your body when you didn’t want this? The reply categories were: never happened to me; and circle as many as apply of: *touched* your penis, crotch, breasts, buttocks and anus; and *kissed/licked* your penis, crotch, breasts, and anus; and other types of touching (specify).
- Has anyone *ever tried to have sex* with you when you didn’t want this, or *sexually attacked* you? The reply categories were: never happened to me; and circle as many as apply of: *tried* putting a penis in your vagina, tried putting something else (a finger or an object) in your vagina, tried putting

a penis in your anus, and tried putting something else in your anus; and *forced* a penis in your vagina, forced something else in your vagina, forced a penis in your anus, and forced something else in your anus; *stimulated* or *masturbated* your crotch or penis; and other acts (specify).

A summary of the specific types of unwanted sexual acts reported by persons in the national survey is given in Chapter 7.

Since some persons had been victims of more than one unwanted sexual act, the results listed are non-accumulative with respect to the types of sexual offences reported. About three in five persons in the national survey (57.9 per cent) said that they had never been victims of sexual offences. There were sharp differences between females and males with respect to their having been victims. About one in two females (53.5 per cent) said that she had experienced these types of unwanted sexual acts. In contrast, slightly less than one in three males (30.6 per cent) had been a victim. About one in five (22.3 per cent) of the female victims reported two or more sexual offences in comparison to about one in 15 males (6.6 per cent) who had been involved in two or more such incidents.

**Table 6.1**  
**Types of First Sexual Acts Committed Against Males and Females**

Type of Sexual Act Committed	Sex of Victim					
	Males (n = 1002)		Females (n = 1006)		Total (n = 2008)	
	No.	Non-Accum.%	No.	Non-Accum.%	No.	Non-Accum.%
None	695	69.4	468	46.5	1163	57.9
Exposed to	89	8.9	198	19.7	287	14.3
Threatened	50	5.0	106	10.5	156	7.8
Touched	128	12.8	236	23.5	364	18.1
Attempted/ assaulted	106	10.6	222	22.1	328	16.3

*National Population Survey.* Non-accumulative totals. Two or more sexual acts were committed against 22.3 per cent of female victims and 6.6 per cent of male victims.

When each category of unwanted sexual act is considered, as summarized in Table 6.1, the ratio between females and males with respect to the proportions victimized is consistently about two-to-one. While about one in seven persons (14.3 per cent) reported an exposure, acts of this kind had been committed about twice as often against females (19.7 per cent) as against males (8.9 per cent). About one in 13 persons (7.8 per cent) said that another person had threatened to have sex with them. Such threats were reported by about one in 10 females (10.5 per cent) and by one in 20 males (5.0 per cent).



The persons participating in the National Population Survey were asked if they had ever experienced an unwanted touching of “a sex part” of their bodies. These acts were reported by about one in six persons (18.1 per cent) with double the proportion of females (23.5 per cent) as that of males (12.8 per cent) reporting such incidents. In response to the question whether anyone had ever tried to have sex or had forcibly sexually assaulted them, about one in five females (22.1 per cent) and one in 10 males (10.6 per cent) said that they had been victims of these acts.

## Sex and Age of Victims

If they had been victims of sexual offences, persons in the National Population Survey were asked how old they were when these incidents had first happened to them. As noted, some persons reported that they had been victims of two or more offences, and in order to preclude a double-counting of reported offences which may have been committed against a person during a single year, only the most serious offence was included in the analysis undertaken.

The findings given in Tables 6.2 and 6.3 list the types of sexual offences experienced by the age of the victim when the act had first occurred. Since some persons did not report either their age or sex, the total number of offences listed in these tables is somewhat smaller than the total of all reported offences.

The majority of the victims of sexual offences were children and youths when these incidents had first happened to them. Relatively few victims were very young children under age seven. It is sometimes suggested that women are primarily the victims of sexual offences. The findings of the National Population Survey indicate that, on average, fewer than one in five persons of both sexes was an adult when he or she was a victim for the first time of an unwanted sexual act. The majority of victims were children and youths between 12 and 18 years-old.

The trends by age were comparable for persons of both sexes. Slightly over half of the female victims of exposers were under age 16; about one in six was

Ages of Female Victims	Female Victims			
	Exposed To	Threatened	Touched	Attempted/ Assaulted
	Accumulative Percentage			
Under age 7	6.5	—	3.1	6.3
7 – 11	27.7	6.9	15.5	22.8
12 – 13	41.3	16.1	28.9	32.2
14 – 15	55.4	31.0	47.5	48.0
16 – 17	66.8	52.8	68.1	69.2
18 – 20	84.2	78.1	83.0	85.0
21 years and older	100.0	99.9	100.0	100.0

**Table 6.2**  
**Ages of Males by Types of First Unwanted Sexual Acts  
Committed Against Them**

Ages of Male Victims	Types of First Sexual Acts Committed Against Male Victims							
	Exposed To		Threatened		Touched		Attempted/ Assaulted	
	No.	%	No.	%	No.	%	No.	%
Under age 7	4	5.8	1	3.6	6	5.7	1	2.4
7 – 11	11	15.9	2	7.1	11	10.5	5	12.2
12 – 13	10	14.5	1	3.6	11	10.5	4	9.8
14 – 15	11	15.9	4	14.3	13	12.4	9	21.9
16 – 17	13	18.8	5	17.8	22	20.9	12	29.3
18 – 20	6	8.7	8	28.6	21	20.0	6	14.6
21 years and older	14	20.3	7	25.0	21	20.0	4	9.8
<b>TOTAL</b>	<b>69</b>	<b>99.9*</b>	<b>28</b>	<b>100.0</b>	<b>105</b>	<b>100.0</b>	<b>41</b>	<b>100.0</b>

*National Population Survey.* Information missing on ages of males for: exposed to (20), threatened (22), touched (23) and attempted/assaulted (65).

\*Rounding error.

**Table 6.3**  
**Ages of Females by Types of First Unwanted Sexual Acts  
Committed Against Them**

Ages of Female Victims	Types of First Sexual Acts Committed Against Female Victims							
	Exposed To		Threatened		Touched		Attempted/ Assaulted	
	No.	%	No.	%	No.	%	No.	%
Under age 7	12	6.5	—	—	6	3.1	8	6.3
7 – 11	39	21.2	6	6.9	24	12.4	21	16.5
12 – 13	25	13.6	8	9.2	26	13.4	12	9.4
14 – 15	26	14.1	13	14.9	36	18.6	20	15.8
16 – 17	21	11.4	19	21.8	40	20.6	27	21.2
18 – 20	32	17.4	22	25.3	29	14.9	20	15.8
21 years and older	29	15.8	19	21.8	33	17.0	19	15.0
<b>TOTAL</b>	<b>184</b>	<b>100.0</b>	<b>87</b>	<b>99.9*</b>	<b>194</b>	<b>100.0</b>	<b>127</b>	<b>100.0</b>

*National Population Survey.* Information missing on ages of females for: exposed to (14), threatened (19), touched (42) and attempted/assaulted (95).

\*Rounding error.

an adult when she had first been a victim of this offence. The likelihood of a person threatening to have sex with a female was more frequently experienced by adolescents than younger girls. Females under age 21, with the exception of those under age seven, were about equally at risk of being touched on the sexual parts of their bodies and of assailants trying to have sex with them or of actually sexually assaulting them.

About half of the males who reported having been victims of acts of exposure were under age 16 when incidents of this kind had first occurred. Only a small percentage of males said that someone had sexually threatened them and proportionately more of these incidents were reported by older rather than younger adolescent males. Under the age of 21 years, the risk of a male child or youth having been sexually touched was about the same for each age category. About half of the males whom assailants had tried to attack or who had been assaulted were boys under age 16.

Ages of Male Victims	Male Victims			
	Exposed To	Threatened	Touched	Attempted/Assaulted
	Accumulative Percentage			
Under age 7	5.8	3.6	5.7	2.4
7 – 11	21.7	10.7	16.2	14.6
12 – 13	36.2	14.3	26.7	24.4
14 – 15	52.1	28.6	39.1	46.3
16 – 17	70.9	46.4	60.0	75.6
18 – 20	79.6	75.0	80.0	90.2
21 years and older	99.9	100.0	100.0	100.0

The National Population Survey was designed to obtain information about whether persons had ever been victims of sexual offences and how old they were when such incidents had first happened. While the survey did not focus specifically on the experience of adults who had been victims, this type of information was obtained if such incidents had first been committed against persons when they were age 21 or older. The results of the survey indicate that a majority of the victims of sexual offences were children and youths when these acts had first been committed against them.

## Regional Distribution

Although information was not obtained in the National Population Survey about where victims had lived when the offences had been committed, their residence at the time of the survey was reported.



Region	Victims of First Sexual Offences
	Per Cent
Newfoundland/Prince Edward Island	28.3
Nova Scotia/New Brunswick	42.0
Quebec	40.2
Ontario	48.2
Manitoba/Saskatchewan	41.8
Alberta/British Columbia	45.4
NATIONAL AVERAGE	42.1

On the basis of where victims resided in 1983, regional differences occurred in the reported prevalence of sexual offences. While the national average of the proportion of males and females who had been victims was 42.1 per cent, reported incidents occurred in slightly over a quarter (28.3 per cent) of residents living in Newfoundland and Prince Edward Island in comparison to about half (48.2 per cent) of those living in Ontario. The overall findings indicate that in no part of the country can it be said that the problem does not exist. The findings of the National Population Survey show that more effective means of reaching victims and of affording them protection must be developed in all regions of the country.

## Intergenerational Trends

Reflecting the changing nature of the values held by Canadians, there has been a more open discussion in recent years about all aspects of human sexual behaviour. Issues once rarely mentioned in public are frequently reported upon by the news media. Because of a heightened awareness of these issues and a growing concern with the occurrence of sexual offences, it is sometimes believed that there has been a sharp increase in the number of violent sexual acts committed. In light of incremental population growth, there is no doubt that through time the volume of these crimes has risen. There is no historical documentation available, however, to determine whether proportionately more persons now than in the past are victims of sexual offences.

With the exception of historical crime statistics, no longitudinal analysis of the actual number of sexual offences committed is feasible. Even so, the findings of the National Population Survey provide a means whereby a comparison can be made of the experience of younger and older persons in this respect. The accuracy of findings dealing with events occurring in the past is

contingent upon the ability of persons to recall precisely the details involved in particular incidents. In general, the findings of psychological studies dealing with learning and memory suggest that an erosion in the ability to recall events increases with the amount of time elapsed. Counter-balancing this trend, however, is the likelihood that persons will recall certain significant events in which they had been involved, such as having been victims of crimes. Because of more emphasis on the teaching of sex education in schools, it is likely that younger persons in comparison to older adults might be better informed and more willing to discuss openly these issues. As a result, to the extent that the passage of time affects a person's accuracy of recall, it is likely that younger persons reported most of the offences committed against them in comparison to older persons who may have under-reported such incidents.

With the exception of youths between 18 and under 21 years-old who proportionately reported more first offences than older persons, the findings in Table 6.4 show that there was no significant variation in these respects for both adult males and females of other ages. Of persons between 18 and under 21 years-old, seven in 10 females (70.2 per cent) and about four in 10 males (38.6 per cent) had been victims of first sexual offences. On average, about half of the adult females of all other ages reported that they had been victims of these offences at least once during their lives. While there was more variation by age with respect to first incidents reported by adult males, on average, less than one in three (30.4 per cent) had experienced an unwanted sexual act.

**Table 6.4**

**Present Ages of Persons Who had been Victims of Sexual Offences**

Present Ages of Persons	Sex of Victims							
	Males				Females			
	No Offence Reported		One or more Offences Reported		No Offence Reported		One or more Offences Reported	
	No.	%	No.	%	No.	%	No.	%
Under age 20	43	61.4	27	38.6	17	29.8	40	70.2
21 – 30	202	68.7	92	31.3	145	49.7	147	50.3
31 – 40	205	75.6	66	24.4	125	44.2	158	55.8
41 – 50	107	67.3	52	32.7	73	45.1	89	54.9
51 – 60	66	64.7	36	35.3	56	49.1	58	50.9
61 years & older	60	70.6	25	29.4	45	49.5	46	50.5
TOTAL	683	69.6	298	30.4	461	46.1	538	53.9

*National Population Survey.* Information missing on age for 21 males and 7 females.

Since the proportion of persons under age 21 included in the National Population Survey is small, the experience of this group may not indicate an

evolving long-term trend resulting in a higher prospective incidence in the occurrence of sexual offences. More research is warranted to assess the nature of the risks experienced by persons in this age group in comparison to those of children and adults.

The main findings of the National Population Survey with respect to the reporting by adults of first sexual offences are that:

1. As many of the older as of the younger adults said that they had been victims of sexual offences.
2. For persons of all ages who were victims, a majority of the first incidents of this kind had happened to them when they were children or youths.

Based on reports of a sample of adults of all ages, the findings of the National Population Survey are congruent with the findings of the Committee's review of historical crime statistics for sexual offences (Chapter 13, *Historical Statistical Trends*). In both instances, each drawing on a different source of information, the findings indicate that in recent decades there has been no statistically appreciable increase in the incidence of sexual offences committed against Canadians. There is no doubt, however, that the number of these crimes is alarmingly high.

**The best evidence available to the Committee suggests that the volume of these crimes in relation to population growth has remained at a relatively constant level for some time. In this respect, the major change that appears to have occurred is not so much an alteration in the incidence of these offences, but the fact that Canadians as a whole are becoming more aware of a deeply rooted problem whose dimensions have not significantly shifted in recent decades. More persons and community action groups are now seeking to redress this situation. The Committee's findings show that the principal victims of first sexual offences are children and youths, and that, while proportionately females are twice as often victims as males, members of both sexes are victims of these crimes.**

## Seeking Assistance

The results of the National Population Survey confirm the trends noted in the personal accounts of victims (Chapter 5) that only a small fraction of first sexual offences against persons is reported to the authorities. While this fact was previously realized, its proportions had not hitherto been documented on the basis of a representative national sample of the Canadian population. In the National Population Survey, persons who had been victims were asked if they had reported these incidents and whom they had told. If they had not sought assistance, they were asked why they had not sought help. The principal findings from the national survey show that:

1. Proportionately more female than male victims of first sexual offences had sought assistance.



2. Assistance was more often sought in relation to more serious than more minor sexual offences.
3. The primary sources of assistance involving the public services (beyond victims telling family members and close friends) were medical services and the police. Few victims resorted to other public services or special programs, such as: distress or hot lines, child protection agencies, rape crisis centres or women's hostels, school staff, public and mental health services, lawyers or criminal injuries compensation boards.
4. Most of these incidents were not reported by victims because they felt these matters were too personal or sensitive to divulge to others, and because many of them were too ashamed of what had happened.

Female victims were more than twice as likely (23.8 per cent) as male victims (11.1 per cent) to have sought assistance. However, a majority of victims of both sexes had not done so. For three in four female victims and about nine in 10 male victims, these incidents had been kept as closely guarded personal secrets.

**Table 6.5**  
**Victims Seeking Assistance by Types of First Sexual Offences**

Type of First Sexual Offence Against Victim	Victims Seeking Assistance					
	Males			Females		
	Number of Victims	Number of Victims Seeking Assistance	Proportion of Victims Seeking Assistance	Number of Victims	Number of Victims Seeking Assistance	Proportion of Victims Seeking Assistance
	Number	Number	Per Cent	Number	Number	Per Cent
Exposed to	89	2	2.5	198	20	10.1
Threatened	50	2	4.0	106	15	14.2
Touched	128	13	10.2	236	30	12.7
Attempted/assaulted	106	17	16.0	222	63	28.4

*National Population Survey.* Non-accumulative results for specific types of sexual offences with proportions of victims seeking assistance calculated on actual totals of male (307) and female (538) victims respectively.

With respect to the type of sexual offence committed, a gradient occurs: fewer of the less serious incidents were reported and assistance was more often sought by victims of more serious assaults. Males were involved in few incidents of exposure and virtually none reported them. Although proportionately four times as many females as males reported exposures, nine in 10 females did not seek assistance following these incidents.

More victims of both sexes reported threats than exposures with about one in seven females (14.2 per cent) telling another person about incidents of this kind. About one in eight females and one in 10 males sought assistance as a result of someone having "touched the sex parts" of their bodies when they had not wanted this to happen.

The offences for which victims had proportionately sought more assistance were those where a person had attempted to have vaginal or anal intercourse or where victims had been sexually attacked and forced to have vaginal or anal intercourse. More than one in four female victims and one in six male victims had reported these types of incidents.

In considering where victims seek assistance, information can be obtained either from the records of services and agencies or from accounts reported by victims. On the basis of information obtained from the former source, it might appear that a substantial number of public services and community agencies is being contacted by victims. If the latter type of information is drawn upon, such as that obtained in the National Population Survey, then it is evident that while many different programs had been contacted, there were only three or four principal sources of assistance which had consistently been turned to by most victims.

Of the victims who had sought assistance, about half of the females (50.6 per cent) and about a quarter of the males (27.6 per cent) had told a family member or a friend. The police were contacted by one in 11 female victims (9.0 per cent) and by about one in 14 male victims (6.9 per cent). About the same proportion of both males and females seeking assistance, one in seven, either had visited a physician in community medical practice or the outpatient department of a hospital. The only other public services turned to for assistance, in each instance by only between two and four per cent of victims, were child protection services and school teachers or counsellors. All of the other types of helping services either were not turned to at all, or by less than two per cent of the victims who sought assistance. These seldom used services included: religious leaders (clergymen, priests, rabbis); help or distress lines; lawyers; public health and mental health services; sexual assault centres, rape crisis centres and women's hostels; and criminal injuries compensation boards.

Some of the services which were infrequently turned to by victims, such as help or distress lines, sexual assault/rape crisis centres and women's hostels, have only recently been established and this fact partially explains why they may have been proportionately less used, particularly by older persons who had been victimized when they were children. Other types of infrequently used services, however, included some which are generally well established and which constitute a recourse for persons to turn to in times of distress or need. Services of this type include those provided by religious leaders, lawyers, public health and mental health workers, school teachers and counsellors, child protection workers and criminal injuries compensation boards.

# Not Seeking Assistance

Each person in the National Population Survey who had been a victim of a sexual offence was asked if he or she had not sought assistance, “Why didn’t you tell anyone or report this?”

Reason Incident Not Reported	Males	Females
Too personal a matter to tell anyone	1	2
Too ashamed it happened	3	1
Afraid it wouldn’t be believed	7	4
Too young to know it was wrong	6	7
Felt partly responsible it happened	6	5
Wasn’t important enough to do anything	2	8
Didn’t bother me that much	5	9
Didn’t want to hurt other members of family	7	6
Didn’t want to hurt the person who did it	4	7
Afraid of person who did it	8	3
Threatened not to tell by person who did it	9	8
Too angry to do anything	9	8
Other reasons	10	10

The reasons most frequently cited for not seeking assistance were that: the victims were too ashamed of what had happened; they felt it was too personal a matter; for females, fear of the person who had committed the act; and for males, the event wasn’t important enough to do anything about it. Although over four in five of the sexual offences reported in the National Population Survey had been committed against persons when they had been children and youths, few victims said that they had not sought assistance because they had been “too young to know it was wrong”. The written comments of persons in the National Population Survey explain in their own words why most of them had refrained from seeking assistance.

- *34 year-old preschool worker.* “I was approached when about 13 by a family friend and fondled on nights when he realized my parents would be out. If I had been able to discuss it with my parents and known that they would do something about it, I would have told. I felt it would only have been more trouble”.
- *56 year-old nurse.* When she was 12, her middle-aged uncle “petted my breasts and vagina. It was many years ago. I suppose I should have told my Mother”.
- *39 year-old manager.* When he was 14, he was “delivering papers - collecting money - and this man asked me in, and just made a quick grab with his hand at my crotch. I told no one. A young person should be told what to do, and whom to see for any sexual violation”.



- *45 year-old mother.* When she was seven, a 15 year-old boy and his friend "held me down and removed my pants and underwear for a look and feel. I escaped. My father spoke to him and his family and threatened to call the police if it happened again".
- *20 year-old secretary.* When she was 13, a family friend attempted to rape her: "If I was older and not made to feel so ashamed of it, I would have told the proper authorities, but at the time, I was so young and very ashamed of the whole thing".
- *18 year-old clerk.* When he was 12, a delivery man in his twenties "lay on top of me and masturbated himself". He told his mother and the man was charged by the police. "No harm was done to me, but the perpetrator was probably done harm by the police. The family doctor only hurt me by probing my anus. It would have been better for all concerned if I hadn't reported it".
- *60 year-old grandmother.* When she was 13, her father had fondled her breasts and crotch. She told no one. "I felt it was O.K. to do this - it was done only in fun".
- *36 year-old nursing aide.* When she was eight, "we were play-acting. An older boy placed a pocket-watch in my pubic area. By making little of the incident, I believe no harm was done. Sometimes, exploiting things does more damage than respecting the privacy of them".
- *51 year-old salesman.* When he was 10, "a man in a theatre reached down and grabbed my penis during the show. There is no defence in a darkened theatre. The show never had sexual overtones. I guess the guy was sick".
- *34 year-old mother.* When she was 13, she was threatened several times by a 19 year-old employer. "The guy tried to put his finger in my vagina and put his hands all over my body. After that, he told me that if I told, he would really get me the next time, so I didn't tell anyone. I thought all males were animals. I saw a doctor twice weekly. People like me feel too ashamed to tell or too scared to tell. Society, whether they believe it or not, are too quick to blame the girls".
- *21 year-old student.* When she was 13 she was grabbed on her breasts and crotch by her 15 year-old date who threatened to have sex with her. "My boyfriend had several bottles of beer. His friend encouraged him to try drugs. Everyone was experimenting with sex, so I felt it was a normal reaction for him". She told no one about the incident.
- *48 year-old teacher.* When he was 19 "while sleeping with a male friend, he manipulated my penis. No one was told. I was naive and ignorant about such matters. I had no way of dealing with it. Many years later, the person was hospitalized off-and-on in a mental institution".
- *40 year-old clerk.* When she was eight, her step-father regularly had intercourse with her. She subsequently had a child. Because she was afraid, "the family kept it very quiet. I feel mothers should be at home with their children, instead of working or running around".
- *20 year-old secretary.* When she was between 12 and 13 years-old, "a girl friend's father touched her friends while pretending to read us stories. I might have known how to deal with this situation if I had been more aware as a child of sexual abuse and had been told by my parents or teachers".

- *44 year-old salesman.* When he was about four years old, he was “sexually molested by a baby-sitter” - an 18 year-old female. “As a small child, this left a bad memory. Keep care of your kids yourself. Don’t farm them out to others”.
- *36 year-old mother.* When she was 10, her “stepfather threatened to make me go to bed with him. I didn’t tell ’cause I was scared to death”. He fondled her vagina. “I was really upset, and felt someone should notice what was happening to me. Finally, I ran away from home”.
- *41 year-old researcher.* When she was 15, her next door neighbour “was physically intimate with me without vaginal entry. I never told anyone. I thought I was being grown-up. I was ashamed and unable to tell anyone. Whatever happened, my father would have been ashamed and have blamed the man. What I didn’t understand, until recently, was the extent of my own sense of complicity”.
- *30 year-old manager.* When he was 19, a 45 year-old “homosexual picked me up”, threatened him and felt his penis. He told his friends. “They beat the hell out of him. Homosexuals are more accepted now. They should be allowed to do what they want together. If they try force, they should be charged with rape and punished”.
- *19 year-old student.* When she was 13, she was sexually attacked by two students (ages 16 and 17) and two adults (a gas station owner and a retired man). They sexually fondled her, kissed her crotch and forced their fingers into her vagina. “I was very young. By the time I realized what was happening, I tried my hardest to get out of the situation. I managed to escape before damage was done. I didn’t say anything to anyone because I was so embarrassed”.
- *30 year-old mother.* When she was 14, “an over zealous date (a 21 year-old male) made persistent physical contact. My situation is a fairly common problem. But it was extremely frightening. Fortunately, I was able to talk freely with my mother. I do feel that too little is said against this ‘normal’ behaviour”.
- *30 year-old physician.* When he was 14, a 55 year-old acquaintance fondled his penis and masturbated himself on top of him. “At the time I was 14, but I feel I handled the situation well enough. The offender learnt his lesson”.
- *42 year-old clerk.* When she was nine, a cousin fondled her breasts and crotch. “A cousin tried to fondle me. He held me down and I fought back”. She told her mother, but “because of ignorance, nothing was exposed - to keep peace in the family”.
- *22 year-old mother.* When she was 13, a farmer who was a close family friend, “touched my private parts when I was waking up from a sleep. I think that more public awareness would have helped. I would not have felt as totally alienated if I had had some support, some place to turn to without social stigma attached to making it public, including the family”.
- *43 year-old planner.* When he was 16, he had been “approached in a public washroom by a homosexual” who fondled his penis. “I should have reported the incident to the police to prevent other assaults to persons”.
- *42 year-old mother.* When she was nine, she was sexually fondled by three males aged 17, 30 and 30 years-old. They also attempted to insert their

penises in her anus. "I never told. If I had known, I could have told someone and not gotten into trouble for telling. And if I had been old enough to realize the persons doing those things needed help themselves to realize they had a problem".

- *23 year-old farm worker.* When he was 14, an older teenager had tried to force his penis into his anus. "This person was a macho guy, a body builder and not the sort one would suspect". Because "no harm was done", he didn't report the incident.
- *56 year-old mother.* When she was 13, her 46 year-old uncle tried to rape her. "I had no one to talk to and I did not understand. My parents had deceased. He threatened to throw me on the streets".
- *20 year-old student.* When he was 14, a neighbour who was a butcher "tried verbally to force me to submit to him". A friend and the school staff were told. "The school mentioned it to the police and to friends in the community".
- *30 year-old manager.* When she was 10, a 16 year-old second cousin attempted to rape her. "My cousin told me we were playing a game". She told no one about the incident.
- *48 year-old clergyman.* When he was 10 years-old, a 14 year-old boy forced his penis into his anus. He didn't tell anyone because "I didn't want to cause any trouble".
- *35 year-old writer.* When she was nine, her "genitals were touched under verbal disguise of something else at that age by a farm helper while I was on vacation. I don't really think I could have been helped, unless I had been made aware of sexual advances at that young age. At that time, you just weren't aware".

The principal reasons why most of these persons had not sought assistance underscore the nature of their fears and the stigma associated with having been a victim of a sexual offence. A recurring theme in some of these accounts is the sense of uncertainty about what constitutes acceptable or unacceptable sexual activities.

Reflecting changes in social values, sexual customs are in transition about which partner is expected to initiate sexual activities, about which types of acts are acceptable, and about the nature of the signals connoting agreement, feigned reluctance or refusal. These are not situations in which the terms of a contract are specified in advance. Many victims found themselves in situations in which they were frightened, embarrassed or ashamed. It is evident from these accounts that a sharp and absolute distinction must be taught to children concerning their involvement in sexual activities in which there is any element of authority, harassment, exploitation or force.

In relation to the reasons cited by victims why they did not seek assistance, it is evident that for most of them, their decisions had little, if anything, to do with the types of services available, but revolved around deeply-held personal concerns. In its research, the Committee found no firm evidence suggesting that a majority of victims did not turn to public services because they feared the staff of these programs. The findings suggest that what the victims feared



most was the disclosure of what had happened, particularly when this meant telling family members and close friends.

## Summary

On the basis of the results obtained by the National Population Survey, it was found that:

1. About one in two females and one in three males had been victims of sexual offences.
2. Children and youths constitute a majority of the victims. About four in five of the victims were under age 21 when the offences were first committed against them. Fewer than one in five persons was victimized for the first time when he or she was an adult.
3. A high proportion of persons in all parts of the country reported having been victims of these offences.
4. On the basis of offences reported by adults of all ages, it appears that there has not been a sharp increase in recent years in the incidence of sexual offences.
5. A majority of sexually abused victims did not seek the assistance of public services, and when such help was sought, physicians and the police were the groups most frequently contacted.

**Sexual offences are committed so frequently and against so many persons that there is an evident and urgent need to afford victims greater protection than that now being provided. The findings of the National Population Survey clearly show the compelling nature of the fears and stigma associated with having been a victim of a sexual offence.**

Elsewhere in the Report, the Committee recommends changes in legislation intended to strengthen the legal protection and rights of children and youths who are victims of sexual offences. These recommended changes in legislation constitute an essential legal framework to afford better protection for children and youths. These measures, if taken by themselves, would be insufficient to contain this widespread problem.

**What is required is the recognition by all Canadians that children and youths have the absolute right to be protected from these offences. To achieve this purpose, a major shift in the fundamental values of Canadians and in social policies by government must be realized.**

The Committee is aware that these basic changes will not come about easily or quickly. If no action is taken, or if only token programs are initiated, the risk that children and youths will continue to be sexually abused will remain intolerably high. In this respect, one of the Committee's major recommendations, given in Chapter 3, is that the Office of the Commissioner which we recommend be established have as one of its principal responsibilities, in co-operation with the provinces and non-governmental agencies, the development, co-ordination and implementation of a continuing national program of public education and health promotion focussing on the prevention of sexual offences and the protection of young children, youths and adults who are victims.



## Chapter 7

# Dimensions of Sexual Assault

Drawing on the results of four national surveys, this chapter provides a summary of who the sexually assaulted child is and the circumstances involved in the assaults committed. The results given here pertain only to *sexual assaults* which, by definition, involved any type of sexual touching of the child by another person. The results on offences where there was no touching of the child are given in Chapter 8, *Acts of Exposure*. This separation of findings is made in light of the legal aspects of these offences and to preclude the listing of results which would be misleading were the findings for all types of sexual offences aggregated together.

Provincial child welfare statutes establish different age limits with respect to services and protection afforded to children. Information reflecting the operation of these statutes was collected in the national surveys in relation to the experience of children who were 16 years of age and older. The findings for youths between age 16 and under 21 years-old are reported in the review of sexual offences specifying either higher age limits or no age limits and these results are given in Chapter 24, *Police Investigation*, and Chapter 25, *Elements of the Offences*. In this chapter, in order to provide a common denominator as a basis upon which to review the experience of sexually assaulted children, *only findings for children age 15 or younger are considered*.

The personal accounts received by the Committee (Chapter 5, *Personal Accounts*) and the findings of the National Population Survey (Chapter 6, *Occurrence in the Population*) show that a majority of the victims of sexual offences either do not contact or are unknown to those public services whose responsibilities include the provision of assistance and protection for them. When victims seek help, they typically turn to only one of two or three services, most often to physicians or hospitals, the police, and less frequently to social services, including child protection agencies. As a result, the experience of sexually assaulted children known to these services only partially reflects the dimensions of the actual occurrence of these offences committed against children and youths. The offences reported to these services or identified by their professional staff constitute, however, victims for whom assistance can be provided, and upon whose behalf, legal action can be taken. In this respect, the



public services cannot respond to the needs of victims which are not reported, or which are not identified by the work of their professional staff.

Reflecting differences in the types of offences committed, the identities of assailants, where the incidents occurred, the decisions made by victims and their families, and the nature of the mandate of each public service, there is a selective winnowing of the types of victims known to physicians, the police and child protection workers. In undertaking its research, the Committee was afforded the unusual opportunity to obtain extensive information about sexually abused children and youths from each of these public services.

When it started its review, the Committee found that there was insufficient documentation available about the types of public services and voluntary community agencies to which victims may turn for assistance. On the basis of its review of research and its meetings with officials and the professional staff of programs, the Committee focussed its research attention on the documentation of the experience of victims known to public services having an official mandate with respect to these problems. As a result, the Committee undertook national surveys involving police forces, hospitals and child protection services. In this regard, the findings of the National Population Survey confirm that these services are those which are most frequently turned to by victims of sexual offences.

Benefitting from the considerable co-operation extended by these public services across Canada, the Committee assembled information from each of these three principal sources of assistance to victims. An unusual aspect of the findings obtained is that a comparison can be made between them in relation to the circumstances of the victims, the types of sexual offences committed and the actions officially taken. The detailed findings obtained in these surveys are subsequently presented in the Report. In this chapter, an overview is given of the main dimensions of sexual assaults against children and youths.

In undertaking the national surveys, the Committee sought, where it proved to be feasible, to obtain uniformly comparable types of information. This purpose was not fully realized, since the collection of findings was partially contingent upon the completeness of the information available in records or case files and upon the methods used by different services to identify and classify reported sexual offences. In addition, because the needs of the victims served differ and the types of services provided vary, each public service selectively specializes in somewhat different types of assessments and in the provision of different forms of assistance.

## Sex of Victims

Sharply different findings have been reported in the research on sexual offences about the proportion of girls and boys who are victims. Although the reported estimates have ranged from between three in five and nine in 10 victims being girls, the latter is the most widely cited ratio. Some reports, such as

that of the Metropolitan Toronto Chairman's *Special Committee on Child Abuse* (1982) have concluded that virtually all victims are girls. "Since the overwhelming number of child sexual abusers are male (97 per cent) and their victims female (90 per cent), we have chosen to refer to female victims and male offenders in this report."<sup>1</sup> At the other end of the scale, the Metropolitan Toronto Board of Commissioners of Police's *Task Force on Public Violence Against Women and Children* (1983) found that three in five victims were girls.<sup>2</sup>

One of the most comprehensive and widely known reports, the 1957 British study on *Sexual Offences*, found that of sexual assaults reported to the police, about two in three (67.8 per cent) were committed against girls and one in three was against boys (32.2 per cent).<sup>3</sup> When acts of exposure committed against girls are added to the number of sexual assaults against children of both sexes, then about three in four (74.0 per cent) of all of the sexual offences reported in the 1957 British report had been committed against girls and in one in four incidents (26.0 per cent), boys were victims.

The findings drawn upon here from the Committee's national surveys with respect to the gender ratios of victims refer only to *sexually assaulted* children who were under age 16. Since the experience of older children and acts of exposure are excluded, these findings differ somewhat from those cited elsewhere in the Report.

National Surveys	Sexually Assaulted Victims Under Age 16	
	Males	Females
	Per Cent	Per Cent
National Population Survey		
(i) touched	30.8	69.2
(ii) attempted assault/assault	23.8	76.2
(iii) average of (i) and (ii)	28.2	71.8
Police Force	22.3	77.7
Hospital	13.7	86.3
Child Protection	14.4	85.6

In the National Population Survey, about three in four persons who had been sexually assaulted for the first time as children were females (71.8 per cent) and about one in four (28.2 per cent) was a male. When these results are compared to the gender ratios of the sexually assaulted children known to public services, it is apparent that a higher proportion of girls than that of boys was known to these agencies. The closest approximation to the National Population Survey's gender ratio occurs in cases investigated by police forces. In the instance of both the National Hospital Survey and the National Child Protection Survey, the proportion of sexually assaulted girls was approximately a fifth higher than that in the National Population Survey.

The proportion of girls to boys who were the victims of sexual assaults documented in the four national surveys is somewhat lower than the most commonly cited estimate of nine in 10 victims being girls. On the basis of the findings of the National Population Survey, **it appears that about three in four victims are girls and that one in four is a boy.** The results of the national surveys show that different gender ratios of victims are known to the public services with these findings having social policy implications with respect to the scope and types of services provided to victims. While the central thrust of public concern has often focussed on the plight of young female victims, the results indicate that services providing assistance and protection for young male victims are also warranted.

## Age Distribution

The summary national statistics about the age and sex of sexually assaulted children tell us little about the anguish and fear they experience as victims. The statistics do, however, clearly indicate that **a large number of victims were very young children and that there are sharp differences proportionately by age between how many children are victims and how many are known to public services.**

Age	Female Victims			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	9.2	17.9	27.1	22.0
7 –11 years	29.4	29.1	34.9	39.9
12–13 years	24.8	20.7	15.9	21.6
14–15 years	36.6	32.3	22.1	16.5
TOTAL	100.0	100.0	100.0	100.0

Depending upon which public service had been contacted, between twice and three times the proportion of very young female victims were reported as that of females in the National Population Survey who were sexually assaulted when they were under age seven. In comparison with the findings of the National Population Survey, a disproportionate number of sexually assaulted patients treated at hospitals was younger girls while the proportion of older girls known to the police and child protection services more closely approximates the age distribution found in the National Population Survey.

In the National Population Survey, of males who had been sexually assaulted when they had been younger than 16 years-old, about one in eight at the time (11.9 per cent) had been a boy under age seven. In contrast, male victims in this age group were about two and a half times as likely to be known to



Age	Male Victims			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	11.9	29.0	28.3	38.0
7 –11 years	27.1	38.5	46.3	32.0
12–13 years	25.4	14.2	20.9	18.0
14–15 years	35.6	18.3	4.5	12.0
TOTAL	100.0	100.0	100.0	100.0

public services. While on the basis of the findings of the National Population Survey, it appears that the proportion of sexually assaulted males increases with age, the reverse trend is true in relation to the proportion of older male victims known to the police, hospitals and child protection services. The findings suggest that in addition to a victim’s sex, his or her age appears to influence whether the public services are contacted for assistance.

### Time of Occurrence

Because many sexual assaults had been committed sometime well before public services had been notified, information about exactly when the incidents had occurred was either missing or incompletely recorded in the files and charts drawn upon in two of the national surveys and this type of information was not obtained in the National Population Survey. In this regard, only the findings obtained in the National Police Force Survey are presented.

Because of the effects of inclement weather and the times of the year when children are at school, it is not surprising that a large number of sexual offences against children reported to the police occur during the daylight hours and the spring and summer months. The largest number of sexual assaults reported to the police occurred during the spring and summer. The seasonal distribution of the offences was about the same for male and female victims.

Seasons	Per Cent Males	Per Cent Females
Spring	31.1	27.6
Summer	32.4	34.6
Autumn	18.5	22.9
Winter	18.0	14.9

In the National Police Force Survey, of the occurrences for which the time of the incident was given (69.5 per cent), over half (56.9 per cent) had

occurred during the hours of daylight. About two-thirds (65.6 per cent) of the assaults against boys in comparison to slightly over half (55.2 per cent) of those against girls were committed during the morning and afternoon. Over a quarter of all assaults took place during the evening between 6 p.m. and 10 p.m. One in nine boys and one in six girls reported that the offences had occurred between 10 p.m. and 5 a.m.

Time of Day	Per Cent Males	Per Cent Females
Morning (5 a.m. — 12 p.m.)	12.0	12.2
Afternoon (12 p.m. — 6 p.m.)	53.6	43.0
Evening (6 p.m. — 10 p.m.)	23.0	28.9
Night (10 p.m. — 5 a.m.)	11.4	15.9

There was a relatively uniform distribution between the day-of-the-week on which the sexual assaults were reported to have occurred.

Days of Week	Per Cent Males	Per Cent Females
Sunday	12.2	13.2
Monday	14.8	12.8
Tuesday	14.3	14.4
Wednesday	15.0	14.2
Thursday	9.4	13.5
Friday	13.9	15.6
Saturday	20.4	16.3

For both male and female victims, there was a modest peaking in the reporting to the police of sexual assaults which had occurred on Saturday.

## Where the Offences Occurred

In the pretest of the research protocol for the National Police Force Survey, a large number of locations was identified where the offences had occurred. Rather than introducing a distinction between private and public places at the stage of collecting this information, a full listing of all types of locations was established. In the Committee's analysis, a *private place* was operationally defined to include the following locations.

1. House of the victim
2. Apartment of the victim
3. House of the suspect

4. Apartment of the suspect
5. House of the third party:
  - (i) neighbour
  - (ii) friend
  - (iii) parents (living with the victim)
  - (iv) relatives
  - (v) employer
  - (vi) acquaintance
  - (vii) babysitter
  - (viii) youth worker
  - (ix) other
6. Apartment of a third party (categories i-ix, as listed under number 5)
7. Miscellaneous private places:
  - (i) hotel or motel room
  - (ii) cottage
  - (iii) trailer
  - (iv) shed or garage
  - (v) abandoned house

All other locations where the sexual assaults occurred were defined as public places, and to permit a comparison with the results of the 1957 British study on *Sexual Offences*, its classification of public places was adopted.<sup>4</sup> A review of the legal significance of public and private places is given in Chapter 25, *Elements of the Offences*.

The “street-proofing” of children which would entail teaching them to be cautious in their encounters with strangers has been proposed by some observers as a means of reducing the occurrence of sexual assaults against young victims. In relation to these proposals, the most significant finding documented in Table 7.1 concerning **the location of sexual assaults committed against children is that well over half (55.4 per cent) occurred in the homes of victims or suspects**. These are places which are usually considered to be safe and which are not open to scrutiny by the public. The public places where the assaults were committed were potentially accessible to all persons. Among the large number of public places where both sexes were about equally at risk of being assaulted were open spaces, amusement centres, vehicles and a number of buildings accessible to the public. Girls were about twice as likely as boys to be attacked on the street, while boys were twice as likely as girls to be attacked in a number of ‘other’ places (e.g., beaches, construction sites, parking lots, summer camps).

The findings of the National Police Force Survey contrast with those of the 1957 British study which also drew on police records. In the British survey, only a fifth (18.4 per cent) of the sexual assaults against children were committed in the homes of the victims or suspects. In comparison to the Canadian experience, the British study found: over twice as many offences occurring in open spaces; seven times more in public conveniences; 10 times more in places of amusement; and considerably more in a variety of public buildings. The dif-



Table 7.1

## Location of Assaults

Location	Males		Females		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
<i>Open Spaces</i>						
Parks, wooded areas, vacant lots	106	15.2	338	14.1	444	14.3
<i>Streets</i>						
Laneways, bus stops, bridges, subway stations	39	5.6	265	11.0	304	9.8
<i>Houses</i>						
Homes of victims	120	17.2	698	29.0	818	26.4
Homes of suspects	217	31.1	468	19.5	685	22.1
Homes of third parties	31	4.4	116	4.8	147	4.7
Other private locations	13	1.9	55	2.3	68	2.2
<i>Public Conveniences</i>						
	16	2.3	8	0.3	24	0.8
<i>Theatres</i>						
Billiard halls, arcades, movie houses	6	0.9	20	0.8	26	0.8
<i>Other Buildings</i>						
Apartment corridors, church halls, corner stores, elevators, libraries, museums, restaurants, shopping malls	68	9.7	230	9.6	298	9.6
<i>Vehicles</i>						
Buses, cars, school buses, subways, taxis	36	5.2	119	4.9	155	5.0
<i>Other Places</i>						
Beaches, bridges, construction sites, day care centres, gas station, homes for disturbed children, hospitals, parking lots, places of work, summer camps, YMCA	46	6.5	88	3.7	134	4.3
<b>TOTAL</b>	698	100.0	2405	100.0	3103	100.0

ferences between the findings of the two studies may be attributable to the wide span of time between them, the different climates of the two nations, or may reflect that different customs and circumstances were involved in committing these types of offences (e.g., inviting persons into homes, the relative accessibility of private places).

In each of the three national surveys of sexually assaulted children and youths known to public services, information was sought with respect to whether the victim and assailant lived in the same household. Since not all suspects related to victims lived in the same household, this classification differs from the listing of the type of association (e.g., family, acquaintance, stranger) between victims and assailants.

National Survey	Victim and Suspect Living in Same Household	
	Males	Females
	Per Cent	Per Cent
Police Force	9.7	20.8
Hospital	27.0	42.1
Child Protection	41.7	53.3

In each survey, it was found that proportionately more girls than boys who were victims had been living in the same households with their reported assailants.

The early research on the occurrence of crime concluded that proportionately more of the poor than the affluent had crimes committed against them and that they in turn committed a disproportionate number of all offences. These conclusions have been rejected as creating a harsh and negative stereotype about the criminality of the poor. Because there is an inverse and selective reporting of crime along class lines and because much of the work of the helping services is geared to assist the poor, some observers assert it is spurious to conclude that the poor experience more of these problems than other persons.

These issues raise a number of significant ethical and factual considerations. Inherent in the collection of information about criminal offences is the dilemma of the propriety of identifying certain types of social differences. Where this is done in the analysis of certain types of offences, the results obtained may serve to engender and fuel prejudices about certain groups. At the level of the factual documentation of cultural and class differences which may influence the distribution of crime, there appears to be little in the way of firm information available for Canada. These items are not routinely collected or included in official statistics.

Most of the studies focussing on sexual offences either have ignored these issues or have dealt with them cursorily. Among the few studies which have obtained such information, it has variously been concluded that either no dis-

inctions occur along class and cultural lines, or that the members of certain minority groups, many of whom are poor, are at a greater risk of being sexually assaulted than persons in other walks of life. In one component of its research, the Committee obtained information about whether persons lived or did not live in government subsidized housing, a finding which provides a partial measure of the level of family income. Prior to carrying out the National Police Force Survey, a draft research protocol was pretested using the general occurrence records of the Metropolitan Toronto Police Force. During this pretest, a full listing was made of the addresses of: the children reported to have been sexually assaulted; the suspected offenders, when such information was known; and the places where the offences were reported to have occurred. The addresses were compared to the listings of all types of government subsidized housing in Metropolitan Toronto (federal, provincial and municipal).

For the three years between 1979-81, the total number of sexual assaults reported to the Metropolitan Toronto Police Force was 790 cases (189, boys; 601, girls).

Type of Residence	Sex of Victims			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Victim lived in public housing	63	33.3	283	47.1
Suspect lived in public housing	42	22.2	202	33.6
Offence occurred in public housing	45	23.8	203	33.8

- *Children Living in Public Housing.* Of the total of 790 sexual assaults, 43.0 per cent of the children lived in public housing. One third of the boys (33.3 per cent) and almost half of the girls (47.1 per cent) lived in these locations.
- *Suspects/Offenders Living in Public Housing.* Of the incidents where the addresses of the assailants were known, a fifth (22.2 per cent) of the assaults against boys and a third (33.6 per cent) against girls had been committed by persons living in public housing.
- *Location of Offences.* About a third (31.4 per cent) of all sexual assaults committed against children reported to the police in Metropolitan Toronto either took place in the buildings or the vicinity of government subsidized housing. About a quarter of the assaults against boys (23.8 per cent) and a third of those against girls (33.8 per cent) occurred in these locations.

Because considerable time was required to match the addresses of each victim and suspect with the listings of government subsidized housing, it was not feasible to replicate this component undertaken in the pretesting of the draft research protocol in the full national survey. The trends noted for Metropolitan Toronto, however, warrant further research investigation.



These findings cannot be extrapolated to provide an indication of what may happen elsewhere in Canada nor do they confirm that there is an association between poverty and the occurrence of sexual offences. They accord, however, with the conclusions of the Kinsey report on *Sexual Behaviour in the Human Female*. In that study of 4441 American females, it was concluded that:

Approaches had occurred most frequently in poorer city communities where the population was densely crowded in tenement districts . . . we would have found higher incidences of pre-adolescent contacts with adults, if we had had more cases from lower educational groups.<sup>5</sup>

The results of the in-depth review of the locations of sexual offences against children and youths reported to the police and occurring in Metropolitan Toronto between 1979 and 1981 show that for persons who committed sexual offences, public housing units appear to constitute an easily visible target where a large number of children live in the same location. To the extent that a comparable degree of visibility may occur in other locations where many children live and may be readily accessible, special attention in this regard may be warranted in programs of education to inform children and their families about the risks of unwanted sexual approaches and about what to do when these occur.

## Types of Sexual Acts

An assortment of definitions of child sexual abuse and sexual offences against children has been used in research reports, official crime statistics, the medical classification of diagnoses and provincial child welfare legislation. None of these typologies, some of which are widely used as the basis for the reporting of statistics on child sexual abuse, identifies the full range of specific types of sexual acts which may be committed against children. Because each system classifies the information obtained differently, a direct comparison of the findings obtained from these sources is effectively precluded.

Some research studies, for instance, have focussed on only one sexual act, such as rape or the catch-all category of pedophilia, while others, under the heading of sexual assault, have grouped together all offences, including acts of exposure. In some instances, terms having precise legal meanings have been operationally redefined. Rape, for example, has been broadened in some studies to include all acts of oral, anal and vaginal penetration and the legal meaning of incest has been extended to incorporate all types of sexual acts committed against the child by all family members whether they are blood relatives or persons unrelated to the child living in the same household. Furthermore, it has been a common practice in the research and the official statistics of public services to group together either broad categories or all types of sexual acts without regard to their behavioural distinctions or their legal significance.

In developing its classification of the different types of sexual contacts between persons, the Committee sought to ground this listing on the full range

of sexual acts which actually may occur. In this regard, the Committee drew upon: the types of sexual acts specified in the sexual offences in the *Criminal Code*; the general research literature on sexual behaviour and offences; and a review of the sexual offences against children reported for a year to the Metropolitan Toronto Police Force. The listing derived from these sources was reviewed to ensure that all sexual acts prohibited by the *Criminal Code* were separately identified and that separate categories were established for each of the most commonly occurring acts. The revised classification was used in each of the national surveys conducted by the Committee.

The inclusion of the classification of sexual acts in the National Population Survey served two purposes, the first being to provide an estimate of the occurrence in the population of unwanted sexual acts, and the second being to establish a baseline with which to compare the findings obtained in the national surveys of public services. The classification of unwanted sexual acts is divided into two broad categories distinguishing between acts of exposure, or actions involving no touching of the person, and sexual assaults, or acts involving any type of sexual touching of the person. The latter category for which findings are given here includes contacts between persons ranging from the touching, fondling and kissing of the parts of the body to oral, anal and vaginal penetration by a penis, finger or object. (The findings on acts of exposure are given in Chapter 8).

The detailed specification of types of unwanted sexual acts obtained in the National Population Survey provides a basis for estimating their occurrence in the population. The results indicate that a sizeable proportion of Canadians, involving over three times more females than males, has experienced at least once, different acts of sexual molestation entailing the touching, fondling or kissing of breasts, buttocks or genital parts of the body. The unwanted licking or sucking of a person's vagina, penis or anus has occurred at least once to two in 100 females (2.1 per cent) and three in 100 males (3.1 per cent).

**In relation to the occurrence of more serious sexual assaults, the findings of the National Population Survey show that about four in 100 (3.8 per cent) females had at least once been raped, i.e., had an unwanted vaginal penetration by a penis. The survey's findings indicate that about two in 100 persons (2.1 per cent) of both sexes have either experienced at least once an unwanted anal penetration with a penis, attempts to commit these acts or anal penetration by means of objects or fingers.**

A summary of the most commonly occurring unwanted sexual acts documented in the four national surveys undertaken by the Committee is given in Table 7.2. Elsewhere in the Report, more detailed findings are given with respect to victims who experienced these acts and their care and management by the police, hospitals and child protection services.

With the exception of young female patients treated at hospitals, a high proportion of young females in each of the other surveys was known to have been sexually molested (i.e., acts involving touching, fondling). A higher pro-

Table 7.2

Types of Sexual Acts Committed

Type of Sexual Contact	National Surveys									
	Population		Police Force		Hospital		Child Protection		Per Cent	Per Cent
	Males	Females	Males	Females	Males	Females	Males	Females		
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent		
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent		
Fondling/touching breasts, buttocks	3.7	32.9	11.0	43.5	4.1	8.9	10.8	33.9		
Fondling/touching genital area	12.1	14.5	60.1	48.1	31.1	35.9	30.0	34.7		
Kissing mouth, other parts of body	0.3	3.0	9.9	14.8	5.4	4.0	7.5	13.5		
Oral-Genital	2.6	1.6	29.7	6.7	20.2	11.8	10.0	6.9		
Oral-Anal	0.5	0.5	1.5	0.8	6.8	2.2	0.8	0.4		
Attempted vaginal penetration with penis	0.0	5.9	0.0	6.5	0.0	17.9	0.0	9.9		
Vaginal penetration with penis	0.0	3.8	0.0	17.6	0.0	31.0	0.0	19.6		
Vaginal penetration with finger	0.0	5.2	0.0	7.0	0.0	13.3	0.0	9.6		
Vaginal penetration with object	0.0		0.0	0.6	0.0	2.2	0.0	0.9		
Attempted anal penetration with penis	1.0	1.3	4.4	1.3	10.8	2.6	4.2	0.8		
Anal penetration with penis	0.6	0.3	8.2	0.6	28.4	3.6	16.7	1.8		
Anal penetration with finger	0.5	0.3	2.0	0.5	6.8	0.9	2.5	0.1		
Anal penetration with object			1.3	0.2	1.4	0.4	0.8	0.1		
Bestiality	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0		

Non-accumulative listing of unwanted sexual contacts, for children under age 16.



portion of medically examined girls, about one in seven, was reported to have been a victim of oral-genital and oral-anal acts than that of girls known to the police or child protection services (about one in 13 respectively). A similar trend occurred with respect to acts of vaginal penetration or attempted vaginal penetration. About a third of the girls under age 16 who were medically examined at hospitals had been raped or some other type of vaginal penetration had been attempted. In contrast, one in six girls investigated by the police and one in five known to child protection workers were reported to have been raped.

Somewhat similar trends to those involving the experience of girls were found with respect to the reporting of unwanted sexual acts against boys under age 16. A higher proportion of sexually assaulted boys known to the police (about one in three) and to a lesser extent to hospitals (about one in four) had been victims of oral-genital and oral-anal acts than that of boys known to child protection services (about one in nine).

Where there is mutual consent between partners, many of the sexual acts documented in the national surveys fall within the normal range of sexual behaviour engaged in during childhood or adolescence. The general research on human sexual behaviour suggests that there is typically a progression with age and experience from acts involving a sexual touching and fondling to intercourse and oral-genital contacts. While in some instances, the substance of an act involving particular types of partners constitutes a criminal offence (e.g., incest), in other cases, it is more the attendant social circumstances that sets them apart as offences and establishes a gradient from minor to serious crimes. With respect to sexual assaults committed against children and youths, the findings given here and in Chapter 6, *Occurrence in the Population*, indicate that:

- 1. A sizeable number of Canadian females, and to a lesser extent, males, are victims of unwanted sexual acts.**
- 2. These unwanted sexual acts encompass a wide range of sexual behaviours, one broader than may be commonly realized.**
- 3. Most of the unwanted sexual acts committed against children and youths documented in the national surveys were not reported to family members and friends, and in only a small proportion of these cases were the public services notified.**
- 4. The types of unwanted sexual acts committed become known or are reported on a selective basis to different public services.**

These findings constitute a forceful reminder that the proportions and types of unwanted sexual acts reported by particular public services or community agencies are likely to vary considerably from each other, and that each such source of information only partially reflects the actual occurrence of these acts which are committed against children, youths and adults in the population.

# Threats and Use of Force

Since a clearcut distinction was not always made in the records drawn upon in the three national surveys of public services about how the sexual assaults had been committed, the findings given here pertain to elements which were more clearly and consistently identified by attending professional workers. These elements were where victims had been threatened or where assailants had used some type of physical force before or during an assault.

Assaults where threats had been used included those where the child had been told that he or she would suffer reprisals, blackmail or physical assault. Initially, four sub-categories were developed to distinguish contacts where physical force had been used. The "physical coercion" of a victim involved the use of force by a suspect, for instance, incidents where a child had been physically held down. The category of a "direct assault" of a victim by a suspect included any other type of sexual touching ranging from grabbing a girl's breast to the forced insertion of a penis in a child's mouth. The use of weapons was divided into instances where suspects "threatened" to use a knife, a gun or another object, and those where they were known to have actually "brandished" a weapon either before or during an assault. In the analysis of sexual assaults, these several acts were aggregated into a single category of a victim having been "physically forced" by an assailant. In the remainder of the sexual assaults where neither threats nor physical force were reported, the incidents may have involved: the consent of the child; the use of gifts; and persuasion or seduction by assailants.

**The results of the three national surveys of public services indicate that, on average, three in five sexually assaulted children under age 16 had either been threatened or physically coerced by assailants.**

Action Taken by Assailant	Victim Threatened and Physically Coerced					
	National Police Force Survey		National Hospital Survey		National Child Protection Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Victim threatened	6.0	2.8	16.2	21.1	20.0	21.6
Victim physically coerced	55.8	58.2	27.0	33.0	26.7	28.9
Victim neither threatened nor coerced	38.2	39.0	56.8	45.9	53.3	49.5

In the National Police Force Survey, approximately three in five sexually assaulted children known to the police had been intimidated or physically forced by their assailants to engage in sexual acts. In contrast, for about half of



the victims examined at hospitals or known to child protection workers, neither of these actions was reported to have occurred. The findings suggest that when threats or physical force are used in sexual assaults against children, proportionately more of these victims and their families may seek police assistance than those contacting other public services. The threat to use a weapon, or the actual brandishing of a weapon before or during an assault, occurred in about two per cent of all assaults and knives were used in over three-quarters of these incidents. The other weapons used to threaten children included: guns; baseball bats or metal rods; leather belts for bondage or whipping children; wire clothes hangers; and scissors or a screwdriver to stab victims.

Overall, the results of the three national surveys indicate that a sizeable number of sexually assaulted children had been threatened or physically assaulted before or during these incidents. Only about one in 16 (6.4 per cent) victims was reported to have voluntarily agreed or consented to the sexual acts. In the remainder of the incidents, the children had been persuaded, bribed or seduced. The findings clearly show that few of the assaults can be deemed casual or harmless contacts and that most were accomplished against the will of the child.

## Physical Injuries and Emotional Harms

Sharply contrasting estimates have been reported about the extent and types of injuries experienced by victims of sexual assaults. These estimates vary from less than one per cent to over half of the victims having been severely harmed by assailants.

The 1953 Kinsey report on *Sexual Behavior in the Human Female* rejected as a “myth fostering hysteria” the conclusion that an appreciable number of female children was injured by the sexual advances of adult males. In the study of 4441 females, 1075 of whom when they were children had had sexual contacts with adults, the 1953 Kinsey report found that while over 80 per cent had been emotionally upset or frightened, only a few said that they had been physically injured.

The exceedingly small number of cases in which physical harm is ever done to the child is to be measured by the fact that among the 4441 females on whom we have data, we have only one clearcut case of serious injury done to the child and a very few instances of vaginal bleeding which, however, did not appear to do any appreciable damage.<sup>6</sup>

The 1957 British study of victims of sexual offences found that the majority had experienced no physical injuries. This conclusion was based on the finding that most of these incidents had involved minor offences and that, in some instances, children had consented to the sexual acts. Of the 179 physically injured victims in the British study, 58 became pregnant, 32 had suffered severe injuries or had contracted venereal disease and 68 had been cut or bruised. The British study concluded:

The effects of sexual offences must be assessed more by the results they may have on the moral and emotional development of the victims than on the



basis of the physical injury sustained. There is very little information and considerable difference of opinion concerning the moral and emotional effects of sexual misbehaviour on young children.<sup>7</sup>

The estimates in Canadian research of the extent of the physical injuries resulting from sexual assaults range from: 30 per cent of sexually assaulted children (1975-76 survey by Le Comité de la protection de la jeunesse);<sup>8</sup> 48.4 per cent of the victims 16 years and older (1979 Vancouver victimization survey);<sup>9</sup> 52 per cent of rape victims (1978-79 Winnipeg Sexual Assault Survey);<sup>10</sup> and 58.5 per cent of 147 sexually assaulted persons (1979-80 Ontario Rape Crisis Centre Survey).<sup>11</sup> These divergent findings may be partially accounted for by the fact that: different definitions of what constitutes an injury have been used and, on occasion, there has been no specification of the types of injuries sustained; the experience of victims known only to special services and community agencies has been reported; there has seldom been medical confirmation of injuries to victims; and most of the research reports have focussed on the experience of adult female victims, not that of children and persons of both sexes.

In the national surveys, where it was feasible in light of the information available, findings were obtained about physical injuries and emotional harms sustained by sexually assaulted children and youths. In the National Population Survey, persons who had been sexually assaulted at least once were asked if they had been physically injured or emotionally harmed by the first such incident which had happened to them. Specific types of physical injuries were itemized and victims were also asked if they had been emotionally or psychologically harmed to specify the nature of these harms. The results on injuries resulting from sexual assaults obtained in the National Population Survey are significant because they constitute reports given directly by victims. While on the basis of these self-reports it cannot be assumed that persons who did not indicate that they had not been injured had not in fact been harmed, it is likely, particularly in light of the fact that intensely personal information was volunteered about sexual assaults, that the harms sustained may have been minor, or of a short duration, or may not have been identified (e.g., sexually transmitted disease).

In the National Police Force Survey, the general occurrence files listed: children reported to have been physically injured; children specifically reported not to have been physically injured; and cases where no information was given about injuries. Where physical injuries were not reported in police records, it is a reasonable assumption that none of an externally visible nature was known by the police to have been sustained or that none had been reported by victims. This omission, however, does not mean that children for whom no injuries were reported had not been physically hurt since certain symptoms may only become known later or be identified as a result of a medical examination. For these reasons, information on injuries given in police records likely constitutes an underestimate of the extent of physical injuries resulting from sexual assaults. Police records do not usually list information with respect to emotional and psychological harms incurred by victims.

On the basis of the medical examination of victims, detailed findings on physical injuries and emotional harms were obtained in the National Hospital Survey. These findings are given in Chapter 31, *Injuries Sustained*. In the development of the research protocol for the National Child Protection Survey, it was found that this type of information was not routinely documented in case records since some children had been previously medically examined, were referred for a clinical assessment, or the assaults had occurred sometime in the past. In this survey, detailed information was obtained about the social, behavioural and psychological problems of sexually assaulted children (Chapter 28, *Provision of Child Protection Services*).

Although the nature of the information obtained on injuries in the three national surveys differs with respect to its completeness and classification, several consistent trends emerge from the findings.

1. Both male and female victims of sexual assaults were physically injured and emotionally harmed.
2. Proportionately, more female than male victims of sexual assaults were physically injured.
3. Where information is available, proportionately more emotional harms than physical injuries were sustained by victims.

Harms Sustained	Physically Injured and Emotionally Harmed Victims					
	National Population Survey		National Police Force Survey		National Hospital Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Physically injured	3.9	19.9	6.1	13.8	10.8	24.8
Emotionally/ psychologically harmed	6.8	24.0	—	—	54.0	48.8
Long-term emo- tional/ psychologi- cal harms	—	—	—	—	18.9	17.6

In the National Population Survey, the results pertain to the first sexual assaults experienced by victims with most of these incidents occurring when the persons contacted in the survey had been children and youths. Of female victims, one in five (19.9 per cent) had been physically injured and one in four (24.0 per cent) had been emotionally harmed. Substantially fewer male than female victims reported injuries with only one in 25 (3.9 per cent) having suffered a physical injury, most commonly an irritated or infected penis or anus. One in 15 (6.8 per cent) males had been emotionally harmed.



In the national survey of police records, no information on physical injuries was reported for over half (54.8 per cent) of the children. For a third (33.2 per cent) of the cases, no physical injuries were reported. Of all physically injured children (12.1 per cent) for whom information was obtained in the National Police Force Survey, over twice the proportion of girls (13.8 per cent) than that of boys (6.1 per cent) had been physically injured. Most of the physically injured children had sustained more than one type of physical harm. Twice as many girls (31.5 per cent) as boys (16.7 per cent) had been bruised or scratched on the non-sexual parts of their bodies. Two-thirds (67.1 per cent) of the injured girls had received vaginal injuries, such as bruising, tearing, redness, irritation, a vaginal discharge or a broken hymen. In contrast to injured boys, of whom two-fifths (42.9 per cent) had had anal injuries, only 6.3 per cent of girls had experienced this type of injury. About a third of injured boys (33.3 per cent) and girls (28.9 per cent) reported other physical harms including 13 girls under age 16 who had become pregnant.

In the National Hospital Survey, about one in four girls (24.8 per cent) and one in nine boys (10.8 per cent) were found to have been physically injured. In each instance, these proportions were higher than those documented in the National Population Survey. On the basis of the mental health assessment of these children, half (49.4 per cent) were found to have suffered one or more emotional and behavioural harms resulting from sexual abuse. Further, in the judgment of attending health workers, about one in six children (17.8 per cent) was diagnosed as potentially sustaining a long-term emotional or behavioural harm attributable to sexual abuse.

**The results of the three national surveys drawing upon the experience of well over 7000 sexually assaulted children and youths show that a larger proportion of victims suffered emotional harms than that sustaining physical injuries. As noted elsewhere, however, relatively few of the victims immediately sought treatment or counsel.**

## Sex of Assailants

In recent years, there has been a growing public awareness and recognition in Canada of the rights and needs of gay or homosexual persons. Various estimates, none known to the Committee to have been substantiated by comprehensive documentation, have been made of the proportion of gay persons in the Canadian population. In the National Population Survey, each person was asked "How old were you when you first had a sexual relationship?" Immediately preceding this question, a definition was provided that "by a sexual relationship, we mean having intercourse or sex — in or out of marriage — with someone of the other sex or of the same sex". The definition identified intercourse, either vaginal or anal, as the main element constituting a 'sexual relationship'; the additional specification of having had 'sex' was intended to include sexual behaviour occurring only between females. In the pretest survey, it was found that this question appeared to be clearly understood.



In the National Population Survey, of persons age 18 and older, 78.0 per cent of females and 86.2 per cent of males reported having had “intercourse or sex” at least once. With respect to the first time that a sexual experience of this kind had occurred, the persons contacted were also asked how old they had been at the time and the age and sex of their partner.

Of males and females having had “intercourse or sex”, 95.8 per cent said that their first such relationship had been with members of the opposite sex. About one in 24 persons (4.2 percent) said that their first act of “intercourse or sex” had been a homosexual relationship with the proportions for males (4.1 per cent) and females (4.3 per cent) being about the same in this regard.

The results of the National Population Survey do not provide a measure which permits an estimate to be made about the proportion of gay persons in relation to all persons contacted in the representative sample of Canadians. The findings do, however, indicate that the first time one in 24 sexually experienced persons had had “intercourse or sex”, the relationship had been a homosexual one and that when this relationship had first occurred, most of these persons had been children or youths.

In Chapter 12, *The Sexual Offences*, a legal review is given of the sexual offences for which the insertion of a penis in an anus is an element of an offence. An exception is specified with respect to acts of this kind, if both male partners are 21 years-old or older, if both consent to the act, and if these acts are performed in private.

Of the 4.1 per cent of males whose first sexual relationship had involved the insertion of a penis in an anus, the age of their partner was not reported in about one in six cases. Of the remainder for whom this information was available, only one in seven (13.8 per cent) had involved persons, both of whom at the time had been age 21 years-old or older. In six in seven (86.2 per cent) of the reported acts of this kind, either one or both males were under 21 years-old.

In the Kinsey report on *Sexual Behaviour in the Human Male*, it was found that the average age when the first homosexual contact had occurred was at about age nine.<sup>12</sup> In the National Population Survey, the age range was between 10 and 20 years-old. Over seven in 10 of the males (72.0 per cent) had been under age 18 when they had first been involved in these sexual acts.

Of the six in seven males who had been under age 21 when they had first experienced anal penetration with a penis, the ages of their male partners were:

Males	Per Cent
Partner age 21 years or older	28.0
Partner same age	32.0
Partner younger	8.0
Partner less than three years older	16.0
Partner more than three years older but under age 21	16.0

Based on a representative national sample of the Canadian population, the findings suggest that a majority of first sexual acts between males involving the insertion of a penis in an anus are situations where:

1. One partner is typically under age 21 (86.2 per cent) and of this group, seven in 10 (72.0 per cent) had been under age 18.
2. Over two in five (44.0 per cent) of the under 21 year-old males' partners were more than three years older or were adults when the acts occurred.

In addition to the Committee's findings on heterosexual and homosexual behaviour obtained in the National Population Survey, its findings from the other national surveys confirm the generally held belief that most sexual assaults against children and youths are predominantly committed by males. When findings about the sex of the assailants are aggregated from the national surveys, 98.8 per cent of the suspected offenders were males and 1.2 per cent were females. In the surveys, the gender ratio between male and female assailants varied sharply with the proportion of female assailants being respectively: 1.8 per cent, National Police Force Survey; 2.8 per cent, National Population Survey; and 10.0 per cent, National Child Protection Survey. These differences are likely accounted for by different types of sexual assaults becoming known to the police, hospitals and child protection services.

When the sex of the victims and the assailants are considered in relation to whether the assaults entailed heterosexual or homosexual acts, the aggregated results of the three national surveys of public services indicate that four in five offences (80.9 per cent) were heterosexual and one in five (19.1 per cent) was homosexual. Predictably, virtually all sexual offences (99.2 per cent) against female victims were committed by males, and although the proportion of female assailants was higher when boys (3.1 per cent) than when girls (0.8 per cent) were victims, most of the boys and male youths were sexually assaulted by males.

## Type of Association

In developing its classification of the types of affinity and position of trust relationships, the Committee drew up its listing on the basis of the categories established by the sexual offences in the *Criminal Code*. This listing also included other types of association occurring between victims and assailants. In this summary, the eight categories of association do not indicate that certain proscribed sexual acts specified by *Criminal Code* sexual offences had actually been committed. In the instance of the "incest relationship", for example, while this criminal offence specifies blood relatives who are prohibited from having intercourse with each other, this category is used here to include persons having an incest-type blood relationship to the child who in fact may have committed a number of different sexual acts, none of which was intercourse. The analysis of the type of association and the sexual acts committed is given in Chapter 25, *Elements of the Offences*.



The categories of association between victims and suspected offenders used were:

1. *Incest Relationship*. Blood relatives to the child who were: father, mother, brother, half-brother, sister, half-sister, grandfather and grandmother. (The offence of incest also specifies the blood relationships of child and grandchild, categories which were inapplicable in this analysis.)
2. *Other Blood Relative*. Blood relatives to the child who were: uncle, aunt, nephew, niece and cousin.
3. *Guardianship Position*. As specified in Section 153 of the *Criminal Code*, males whose relationship to a female under age 21 was that of: step-father, foster-father and legal guardian. Included in this category is employer or work supervisor to a female employee under 21.
4. *Other Family Members*. Family members not having a blood relationship to the child who were: adoptive father, adoptive mother, step-mother, foster mother, adoptive brother, foster-brother, adoptive sister, foster-sister, adoptive grandfather, adoptive grandmother, common law (father, mother, brother, sister), in-laws, step-uncle, step-aunt, among others.
5. *Persons in Positions of Trust*. Persons in positions of authority or trust with respect to the child, including: teachers, daycare workers, doctors, babysitters, social workers, school bus drivers, school crossing guards, Big Brother/Big Sister youth workers, minister/priest/rabbi, camp counsellor, dentist, etc.
6. *Friends/Acquaintances*. Persons known to the child who were: boyfriends, girlfriends, personal friends, family friends, acquaintances, neighbours.
7. *Other Persons*. A miscellaneous listing of other persons not included in other categories, all of whom were known or could be identified by victims.
8. *Strangers*. Persons whose identities were unknown to victims, or were not recollected by them.

With one exception, in each of four national surveys, a full listing was obtained of the specific types of association between victims and suspected assailants. The exception involved the National Population Survey where only a few persons in positions of trust were identified with the remainder being aggregated into the "other" category.

The findings of the four surveys show that, in general, the types of association reported in the National Population Survey and the National Police Force Survey are approximately similar, but that both differ substantially from those reported in the National Hospital Survey and the National Child Protection Survey. In the first two surveys, between a fifth and a quarter of the suspected assailants were family members, about a third to a half were friends or acquaintances, and most of the remainder were strangers. In contrast, about half of the assailants of children examined at hospitals and slightly less than nine in 10 suspected offenders of victims known to child protection workers were family members. About one in five patients examined at hospitals had been sexually assaulted by friends or acquaintances and the proportion of vic-



tims falling in this category known to child protection services was about one in 14. In the latter public service, only one per cent of the assailants were reported to have been strangers to children.

**Table 7.3**  
**Type of Association Between Sexually Assaulted Victims**  
**and Suspected Assailants**

Type of Association Between Victim and Suspected Assailant	National Surveys			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Incest relationship	9.9	9.1	23.7	45.8
Other blood relative	8.4	4.2	7.8	4.5
Guardianship position	3.0	4.4	5.6	16.9
Other family member	2.5	3.1	9.8	19.2
Position of trust	1.0	5.3	5.8	2.8
Friend/acquaintance	48.0	36.3	21.5	7.0
Other person (known)	9.4	1.7	8.0	2.8
Stranger	17.8	35.9	17.8	1.0
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

The results of the national surveys confirm trends already noted that the types of sexually assaulted children and youths known to the public services differ significantly. When only the types of association between victims and suspected assailants are considered, the incidents known to the police more closely approximate the experience of persons in the National Population Survey who reported first unwanted sexual acts. An expected difference, however, is that proportionately more cases involving strangers were reported to the police than those who were in this category in the other surveys. In comparison to the population and police surveys, a substantially larger proportion of children and youths who had been sexually assaulted by family members was cared for at hospitals or by child protection workers. In this regard, these services were dealing with a less representative group of sexually assaulted young victims.

Considering the ages of the children, it is not surprising that there were few instances of assaults committed by employers or co-workers. For certain types of crime such as theft or robbery, an obstacle that may hinder effective police work is the lack of information about the identity of the perpetrator. In the 1957 British study on *Sexual Offences*, it was noted that:

... where an association existed between the victims and offenders prior to the offences, the chances of the offenders being detected were much

greater. It is therefore not surprising to find that more than 4 in 10 of the 990 victims, involved in cases in which the offenders were convicted, knew them prior to the offences.<sup>13</sup>

Of the sexual assaults committed against children documented in the national surveys, the identities of a majority of the assailants were known. The proportions of children sexually assaulted by strangers were: 17.8 per cent (National Population Survey); 35.9 per cent (National Police Force Survey); 17.8 per cent (National Hospital Survey); and 1.0 per cent (National Child Protection Survey). **The results clearly show that the main need of sexually assaulted children is for adequate protection from persons whom they already know and may trust.**

## Assaults by Groups

The majority of the sexual assaults against children are committed by one assailant whether these assaults are single episodes or are committed periodically or continuously over a period of time. Less is known about instances where victims may have been attacked on several occasions by different assailants or where victims are simultaneously assaulted by several persons. Based largely on the experience of adults, the research suggests that group assaults are usually planned ahead of time, that more violence and coercion are involved and that the victims of these incidents are often physically injured.

The 1957 British report on *Sexual Offences* found that most of the sexual offences committed by groups were indecent assaults against girls. The estimates for Canada about the proportion of women attacked by two or more assailants range from 14.1 per cent to over half of all sexual assaults which are committed. Beyond a number of case studies, there is no documentation concerning the experience of children and youths who have been victims of group assaults.

A total of 343 incidents involving children having been sexually assaulted by two or more persons was documented in the three national surveys of cases reported to public services. Girls were victims in nine in 10 (89.5 per cent) group attacks; of all types of sexual assaults committed against girls, one in 11 (9.0 per cent) involved two or more assailants. While there were only 36 instances reported in the three surveys of boys having been sexually assaulted by two or more assailants, the findings confirm that acts of this kind do in fact occur. Boys were victims of one in 10 (10.5 per cent) sexual assaults by groups; of all sexual assaults committed against boys, about one in 22 (4.5 per cent) had involved two or more assailants.

The proportion of cases involving more than one assailant was generally similar in each of the three national surveys. Of the 326 group sexual assaults for which the number of assailants was specified, the distribution was: two assailants (58.0 per cent); three assailants (20.6 per cent); four assailants (14.7 per cent); five assailants (3.7 per cent); six assailants (1.5 per cent); and eight assailants (1.5 per cent).

Because the records of the police were more complete and detailed than those drawn upon in the other surveys, the findings of the National Police Force Survey serve as the basis for reviewing the ages of victims and assailants involved in incidents of this kind. The 189 victims of group sexual assaults documented in police general occurrence records had been assaulted by 413 assailants. Regardless of the ages of victims, there was no marked variation with respect to the average age of their assailants which was 18.9 years-old.

Age of Victims of Group Sexual Assaults	Average Age of Assailants
Under age 7	18.6 years
7-11 years	18.1 years
12-13 years	18.4 years
14-15 years	19.8 years

On average, a majority of the assailants committing group assaults were adolescent males with there being only a slight and predictable increase in the ages of assailants who had attacked victims between ages 14 and 15. On the basis of the findings of the National Police Force Survey, three types of group sexual assaults can be distinguished. These categories are: assaults committed by male adolescents; assaults committed by adults; and assaults committed by both adolescents and adults.

Slightly over three in five (62.4 per cent) group sexual assaults were committed by groups of male adolescents. About one in five (18.0 per cent) group sexual assaults had involved only adult assailants, and about one in 12 (8.5 per cent) had been committed by a combination of at least one adolescent and one adult. Of the remainder, the age of one or more of the assailants was unknown.

Proportionately, the youngest group of victims, children under age seven, was at the greatest risk of being attacked by two or more adults. One third (33.3 per cent) of group sexual attacks against children under seven were committed by adults, some of whom were seven or eight times older than their victims. Group sexual assaults committed by adults constituted one in five (19.1 per cent) of the attacks against victims between ages seven and 11, about one in nine against victims between ages 12 and 13 (10.7 per cent) and about one in five (19.7 per cent) against victims between ages 14 and 15.

In the infrequently occurring group sexual assaults committed jointly by adolescents and adults, the age pairings of some of the assailants were: 14 and 26; 13 and 44; 17 and 30; and 15 and 31. Little is known about the circumstances involved in these unusual types of group sexual assaults, about the mental capabilities of the persons involved, or about who may have incited whom to assault the child. Although incidents of this kind occur, the findings show that the greatest risk to young female victims in these types of attacks is from gangs of predatory and dangerous adolescent males.



Table 7.4  
Group Sexual Assaults by Ages of Suspected Offenders

Ages of Victims of Group Sexual Assaults	Ages of Suspected Assailants				
	Adolescents (Under Age 21) (n = 118)	Adults (Age 21 and Older) (n = 34)	Adolescents And Adults (n = 16)	Age Unknown for One or More Assailants (n = 21)	Total (n = 189)
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	53.3	33.3	—	13.3	99.9*
7-11 years	69.1	19.1	7.1	4.7	100.0
12-13 years	64.3	10.7	8.9	16.1	100.0
14-15 years	59.2	19.7	10.5	10.5	99.9*
TOTAL	62.4	18.0	8.5	11.1	100.0

National Police Force Survey.

\* rounding error

# Alcohol and Drugs

Dating back at least to the assembling of crime statistics before the turn of the century when such information was documented in Canada, it has been a widely held belief that the use of alcohol, and more recently of drugs, is closely associated with the occurrence of certain types of crimes, particularly offences committed against the person. In order to document the validity of this belief, information on the use of these substances by victims and assailants was collected in each of the three national surveys of cases reported.

In light of the absence of specific and accurate information in these surveys, it was not feasible to document how much alcohol or how many drugs had been used, but only to learn whether it was reported that these substances were known to have been used by victims, by suspected assailants, or by both persons. In this regard, the information obtained does not constitute a measure of the actual extent to which victims or suspected assailants may have been using alcohol or drugs.

National Survey	Victims Using Alcohol/Drugs	
	Males	Females
	Per Cent	Per Cent
Police Force	4.3	4.8
Hospital	—	1.6
Child Protection	5.0	5.9
Average	4.0	4.6

In the three national surveys, on average, one in 25 boys and one in 21 girls were reported to have been using either alcohol or drugs when the assaults occurred. With the exception of sexually assaulted patients examined at hospitals, the findings were of the same order for assaults against children reported to the police and child protection services.

When these findings are compared to those of a 1982 national survey of children between 12 and 19 years-old, it appears that sexually assaulted children are no more likely to use alcohol and drugs than other Canadian children, and indeed, they may have used them somewhat less often.<sup>14</sup> The national survey undertaken by the Department of National Health and Welfare found that by age 10, a quarter of the youths who were between 12 and 19 years-old in 1982 had drunk alcohol. Six per cent of the children between ages 12 and 14 said that they had smoked marijuana; a quarter of the children in this age group had drunk alcohol at least once during the month prior to the survey.

For purposes of comparison, when only the results of the National Police Force Survey about the use of alcohol by victims of sexual assaults are considered, the findings are similar to those of the 1957 British report on *Sexual Offences*.<sup>15</sup> In the British study which obtained information only on the use of

alcohol, it was found that 4.5 per cent of the victims who were 15 years or younger had been drinking, a proportion which is slightly larger than the 4.1 per cent of the Canadian children for whom this information was reported in the National Police Force Survey.

In contrast to the relatively small number of victims reported to have been using alcohol or drugs when the sexual assaults were committed, on average, over twice as many boys and over three times as many girls were reported to have been assaulted by suspects under the influence of these substances. About one in six (15.7 per cent) of the girls and about one in 10 (9.7 per cent) of the boys were reported to have been sexually assaulted by a person who had been using either alcohol or drugs.

The proportion of suspected assailants reported to have been using these substances when they had assaulted children was comparable for incidents coming to the attention of the police and hospitals. In contrast, child protection workers reported a substantially higher proportion of suspected assailants to have been under the influence of alcohol or drugs. Almost a third of the girls (31.4 per cent) and a quarter of the boys (23.3 per cent) were documented as having been sexually attacked by a person using one or other of these substances. These findings suggest that either the types of sexual assaults coming to the attention of child protection services differ significantly in this respect from those known to the police or hospitals, or that child protection workers may more consistently seek to learn if these substances may have been used in their assessments of sexual assaults against children.

National Survey	Suspected Assailants Using Alcohol/Drugs	
	Male Victims	Female Victims
	Per Cent	Per Cent
Police Force	7.4	11.6
Hospital	6.8	10.6
Child Protection	23.3	31.4
Average	9.7	15.7

With the exception of the findings of the National Child Protection Survey, **the use of alcohol and drugs by assailants does not appear to have been a contributing factor in most of the reported sexual assaults committed against children and youths.**

### Professionally Confirmed Assaults

The child or youth who tells another person about a sexual assault may be in a position of double jeopardy of being disbelieved on account of his or her age and on account of the stigma associated with sexual offences. The legal assumptions about the testimonial trustworthiness of sexually assaulted chil-



dren and youths are reviewed in Chapter 14, *Evidence of Children*. In this chapter, the findings of the three national surveys of public services are drawn upon in relation to whether professional workers assisting young victims believed or disbelieved their accounts of sexual assaults committed against them.

It has become commonplace in some of the research on sexual offences to describe the police investigation of these incidents as a harrowing experience. For these reasons, it has been concluded that “fewer women than formerly are willing to go to the police to lay charges against an assailant” and on occasion when this step is taken, “the police appear to believe that large numbers of women lie about sexual assault and must be prevented from pursuing their complaints.”<sup>16</sup>

These reactions by the police are said to account for the fact that a large number of the complaints about sexual offences are classified as “unfounded” in police investigations. In a 1970 study of rapes reported to the Toronto police,<sup>17</sup> while 63.8 per cent were listed as “unfounded” in police records, the researchers concluded that about nine in 10 (89.7 per cent) had actually occurred. In the report on the experience of five Ontario Rape Crisis Centres, “an alarming increase” was noted “in charges of Public Mischief” being brought against the victim who reports a sexual assault and is not believed.<sup>18</sup>

Although each of the three main services most frequently turned to by sexually assaulted children uses a different vocabulary to describe the attending professional worker’s assessment of whether an incident has occurred, the conclusions reached are comparable in relation to indicating whether the victim was believed or disbelieved. In the field of child welfare, a case is said to be “confirmed” if in the judgment of the attending child protection worker a child’s account of an assault is believed and/or if there is firm evidence indicating the assault had been committed. Cases which are “not confirmed” are those where there may be insufficient supporting evidence or where a worker is uncertain whether the assault had actually been committed.

In medicine, several measures may be drawn upon as an indication of a physician’s assessment of a patient’s condition. These measures include: the patient’s presenting complaint(s); the results of a physical examination and laboratory tests; a description given in a patient’s chart of why he or she needed medical care; and a diagnosis listing a patient’s cause of death, injuries or diseases.

As a means of safeguarding a victim’s identity and on occasion to preclude such information later being used for legal purposes, the Committee learned in the course of undertaking the National Hospital Survey that some physicians were reluctant to use diagnoses specifying sexual assault or child sexual abuse. As noted in Chapter 32, *Medical Classification of Sexual Assault*, although most physicians had used diagnoses identifying sexual assault or abuse, a majority of these diagnoses are not recognized in the most widely used system of disease classification.

In police and crime statistics, an incident or “an occurrence” is considered to be “founded”, if, as a result of an investigation, the evidence indicates that the offence had occurred. “Founded occurrences” include cases where charges are laid against a suspect as well as those instances where a suspect is not known or located, but where in the judgment of the police the evidence indicates that an offence had happened. In contrast, an “unfounded occurrence” is one where it appears in the judgment of the police that no offence occurred. By definition, there is invariably a shortfall between the number of “founded” occurrences reported and the number of charges subsequently laid. This difference is accounted for by the proportion of the cases where the suspects are not located but where it is concluded that the offences had occurred, and for other reasons, such as the parents of a child being reluctant to press charges or where the victims or the witnesses are unwilling to testify.

The findings of the three national surveys of public services show that while the police and physicians believed that virtually all of the sexual assaults against children reported to them had occurred, substantially fewer of the cases cared for by child protection workers were reported to have been “confirmed”.

National Surveys	Proportion of Cases Reported as Confirmed/Founded		
	Male Victims	Female Victims	Total
	Per Cent	Per Cent	Per Cent
Police Force	95.5	93.6	94.0
Hospital			
(i) Presenting complaint	91.9	93.0	92.8
(ii) Frequency of assaults/child sexual abuse	91.9	92.3	92.3
Child Protection	68.9	43.1	45.5

Only 6.0 per cent of the sexual assaults against children under age 16 were classified as “unfounded” by the police, or were incidents where it was deemed that there was insufficient evidence to indicate the assaults had occurred. On the basis of the presenting complaints and the description given of the frequency of occurrence of sexual assault and child sexual abuse, it appears that physicians believed the vast majority of the accounts given by patients. The findings of these two surveys differ strikingly from those of the National Child Protection Survey where it was found that over half of the cases (54.5 per cent) of suspected child sexual abuse were “not confirmed” by attending workers.

In light of the statements sometimes made by observers that certain professional workers, most notably the police, may often disbelieve accounts given by sexually assaulted victims, **the Committee’s findings clearly show that when children and youths are victims, their veracity is highly trusted by the police and physicians.** An unexpected finding is that concerning children



known to child protection workers, of whom over half were not initially believed, namely, their accounts were “not confirmed.”

The findings of the three national surveys indicate that, in general, accounts given by boys are about equally or more often believed than those given by girls. With the exception of the results of the National Hospital Survey where there were no marked differences by the sex of the patients in this regard, the disparities in the other surveys were respectively 1.7 per cent of cases investigated by the police and 25.8 per cent of cases known to child protection workers. With the exception of the National Hospital Survey where the gender of the attending physician was noted, this type of information was not obtained in the other national surveys. On the basis of the Committee's contacts with public services across Canada, it appears that many police officers investigating sexual assault cases are males and that many child protection workers caring for sexually abused children are females. To the extent that these gender ratios are valid, then it may be the case that the gender of professional staff relative to that of victims may be a less significant factor contributing to the potential harassment of victims than the attitudes of professionals and the special training that they may have had. In this respect, it is notable that the highest proportion of “not confirmed” cases (56.9 per cent) involved girls known to child protection workers.

The findings of the National Police Force Survey contrast sharply with the reports about the experience of women who have been raped or sexually assaulted. Since no comprehensive national study for Canadian adults has been made along these lines, it is unknown whether these distinctions occur because adults may react differently than children to these offences, whether different types of acts are committed or whether different investigation practices for adults and children are used by the police. It may also be the case that the sources upon which the conclusions reached for adults about the large number of “unfounded” sexual offences are numerically too small and too unrepresentative of the full range of the sexual offences investigated by the police.

## Charges Laid

The accuracy of the information obtained about whether police charges were laid against suspected assailants varied with the completeness of the records drawn upon in the national surveys of public services. For example, when physicians examine a sexually assaulted victim, they may not know whether charges are pending or have been laid, and as a result, this information may not be recorded in the patients' charts. Accordingly, the findings obtained in the three national surveys are based only on reports where it was indicated that charges had been laid.

Of sexual assaults known to the police and hospitals, proportionately more suspected assailants whose victims were boys than those whose victims were girls were reported to have been charged by the police. This trend was reversed



National Surveys	Charges Laid by Police Against Suspected Assaultants		
	Male Victims	Female Victims	All Victims
	Per Cent	Per Cent	Per Cent
Police Force	46.1	40.9	41.6
Hospital	36.5	22.8	24.4
Child Protection	16.7	22.2	21.4

for cases known to child protection workers where one in five assaultants (22.2 per cent) whose victims were girls and one in six whose victims were boys were reported to have been charged.

To the extent that the findings from the National Hospital and Child Protection surveys are valid concerning whether charges were laid, then it appears that this was about half as likely to have occurred involving cases known to these services than those where the police initially undertook the investigations. This difference, if valid, is even more striking when it is recalled that the identities of assaultants were unknown in 35.9 per cent of cases investigated by the police, in 17.8 per cent of medically examined patients, and in one per cent of the children known to child protection workers.

While in comparison to the cases reported to the police and hospitals the identities of more suspected assaultants were known by child protection workers and proportionately fewer of these suspects were reported to have been charged, the more usual means of intervention adopted was to seek a court hearing to obtain custody of the child. The findings of the national surveys highlight an issue considered in more detail in Chapter 29, *Intervention Strategies*, namely, that there are operationally different approaches taken with respect to seeking to assist and protect sexually assaulted children and youths.

## Primary Sources of Assistance

The findings of the National Population Survey indicate that most victims of unwanted sexual acts had not sought assistance. Of those who had, the public agencies most frequently turned to were physicians, the police and social services. When the findings of the national surveys of public services are considered, it is evident that in each instance there were distinctively different patterns with respect to how sexually assaulted children and youths either had sought help or had become known to these services. On the basis of the average length of time taken to contact services and of whether most victims and their families had contacted or had been referred by other agencies to a particular helping service, a distinction along operational lines can be made *primary* and *secondary* contact services. Services constituting the former category are those which are promptly and directly turned to by sexually assaulted victims or by

those persons who are responsible for their protection and welfare. In the latter category, secondary contact services, while some victims and their families may immediately turn to these resources for assistance, the major part of their caseload is derived from referrals made either by other professional workers or by cases of sexual assault which have been identified in the course of providing previously initiated services.

The amount of time that passes between the occurrence of an assault and its notification to a public service has a direct bearing on the identification of certain types of physical injuries and whether these conditions are likely to be subsequently confirmed by means of a medical examination. Minor scratches and bruises, for instance, may heal quickly. If forensic evidence is to be obtained with respect to assaults involving intercourse, then a medical examination must be undertaken promptly, and for acts of this kind as well as for those involving anal penetration, a medical assessment is warranted with respect to the detection of whether a victim has contracted a sexually transmitted disease. The usual means by which sexually assaulted children and youths seek assistance or become known to public services and community associations is also a partial measure of the extent and type of co-operation and sharing that occur between the helping services with respect to providing assistance for victims.

While the concept of interdisciplinary professional and public service teamwork in responding to these problems has been widely recognized, there is little documentation for Canada of the extent to which interagency cooperation may occur in practice. In this regard, most of the available reports are unidimensional in the sense that typically only referrals made to a particular agency or service are reported. Drawing on this type of information, it has typically been concluded that certain public services have been remiss or derelict in fulfilling their responsibilities with respect to not having reported known cases of child sexual abuse to other agencies. What is often undocumented in reports of this kind is information about the extent to which there has been a two-way exchange of information.

The decisions taken by victims and their families about whether assistance should or should not be sought are affected by a number of considerations, including: the sexual acts committed; who the assailants were; the nature of the fears, injuries and trauma experienced by victims and the reactions of their families; the types of services actually provided by public agencies; and how these services may be perceived by persons in need of assistance. In this regard, not only the type of public service turned to by victims but as well the length of time taken to seek assistance from them are partial measures of their perceived utility and responsiveness in meeting the needs of victims. On the basis of the findings of the national surveys, a sharp gradient was documented in relation to the average lengths of time between when sexual assaults had been committed and when different types of public services had been contacted, notified or had become aware of the incidents.



Three in five sexually assaulted children contacting the police did so within 24 hours after the incidents occurred, about half of the patients treated at hospitals sought care within a day of having been assaulted, and of cases known to child protection workers, about one in five was identified within this time span. The police and hospitals were notified within a week of about three in four sexual assaults which were respectively investigated and medically examined. In contrast, only a third of the caseload of sexually assaulted children known to child protection services consisted of victims who had contacted these workers within a week of when the incidents had occurred, and for one in three of these cases, more than a year had elapsed.

Time Taken To Report	National Surveys					
	National Police Force Survey		National Hospital Survey		National Child Protection Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Immediately	40.3	38.8	4.1	3.6	6.4	10.1
Within 24 hours	18.5	21.4	46.9	43.0	11.1	10.1
Within 1-3 days	8.6	7.3	6.1	11.8	7.9	5.2
Within 4-7 days	6.2	5.9	14.3	10.4	6.3	8.0
Within 1 month	9.9	8.5	8.2	12.3	14.3	11.6
Within 6 months	12.1	9.6	10.2	9.9	20.6	12.7
Within 12 months	3.3	2.9	6.1	2.7	6.3	5.2
Over 1 year	1.1	5.6	4.1	6.3	27.0	37.0
TOTAL	100.0	100.0	100.0	100.0	99.9*	99.9*

\* rounding error

On average, there was no marked difference in relation to the lengths of time taken to seek assistance by boys and girls who were victims or by their families on their behalf. In this regard, it appears that it was not the gender of the victim, but the type of assistance sought which affected how much time passed before different public services had been notified. On average, most victims or their families notifying the police or hospitals had contacted these services within a week after the assaults had occurred. This finding suggests that of those victims contacting the police, these services were perceived by them to be accessible and to be an appropriate source of needed and immediate assistance. In contrast, the findings of the National Population Survey together with those of the National Child Protection Survey clearly show that other types of public agencies, including child protection services and many community agencies, were less often directly contacted by victims or their families. When these other types of services were contacted by victims, this usually occurred sometime after the assaults had been committed. Relatively few victims, for



instance, had contacted child protection services on a “walk-in” basis. Much of the caseload of sexually assaulted children cared for by these services was comprised of victims who had been assaulted over a period of time, or whose identities were already known because they or their families were receiving some other form of assistance.

The findings, summarized in Table 7.5, show that strikingly different referral pathways had been taken by victims, or their families on their behalf, in relation to how the three public services had typically been contacted. About four in five sexually assaulted children known to 28 police forces across Canada had either directly sought the assistance of the police, or these contacts had been made on their behalf by their families, friends or acquaintances. Most of these contacts with the police had been made by what may be called a “lay referral system”, namely, victims or persons close to them had themselves initiated a request for assistance.

**Table 7.5**  
**Initial Referrals to Public Services**

Principal Source of Referral	Public Services					
	Police		Hospital		Child Protection	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Victim and/or family member	83.0	77.5	{ 31.1	{ 44.3	24.2	26.8
Friends/ acquaintances	4.9	5.3			4.2	3.7
School staff	0.3	2.8	—	0.7	2.5	8.0
Physicians	0.1	0.6	8.1	6.0	—	2.5
Other health workers	0.2	0.3	4.0	5.3	5.0	4.2
Child protection/ social services	4.1	5.6	24.3	18.4	34.1	40.0
Police	2.1	0.9	32.4	24.4	10.0	10.5
Rape Crisis/Sexual Assault Centres	—	0.1	—	0.9	—	0.7
Other sources	5.3	6.9	—	—	20.0	3.6
TOTAL	100.0	100.0	99.9*	100.0	100.0	100.0

\* rounding error

In contrast, proportionately fewer sexually assaulted patients examined at hospitals had sought medical care on a “walk-in” basis. About two in five patients or their families (42.6 per cent) had initiated these contacts with hos-

pitals. In comparison to contacts with the police or hospitals, proportionately fewer victims or their families had directly contacted child protection services. Less than a third of the sexually assaulted children and youths (30.5 per cent) known to these agencies had directly sought this type of assistance themselves.

Different lines of communication were found to exist between different public services and community agencies. Teachers and other school staff, for instance, were seldom reported to have referred cases to the police or hospitals, the services most commonly turned to directly by victims. However, one in 12 (8.0 per cent) female victims known to child protection services had been referred by school personnel. In light of the proportion of sexually assaulted victims seeking medical care whose experience was documented in the National Population Survey, few referrals made by physicians, even to hospitals, were reported in the national surveys of public services.

Only one in 17 girls (6.0 per cent) and one in 12 boys (8.1 per cent) treated at hospitals had been referred by physicians. In the three national surveys, a total of 73 referrals to public services had been made by physicians. Overall, other types of health workers were just about as likely as physicians to make referrals to the police, hospitals and child protection services.

Of cases of child sexual abuse referred to police forces, one in 18 (5.6 per cent) involving girls and one in 24 (4.1 per cent) involving boys had been initiated by child protection services. Between one in four (24.3 per cent, boys) and one in five (18.4 per cent, girls) patients examined at hospitals had been referred by child protection workers. Of cases known to child protection services, a third of the boys (34.1 per cent) and two in five of the girls (40.0 per cent) had been referred by other social services or had become known as a result of ongoing casework. Overall, a quarter of cases (26.7 per cent) involving boys and a third (34.3 per cent) involving girls were cases which were already open or for whom other types of assistance were being provided.

Only a small proportion of the cases of child sexual abuse reported to the police involved referrals from other police forces. When this happened, these referrals were usually made by federal and/or provincial forces to municipal forces, or by military to civilian forces. A third of sexually assaulted girls (32.4 per cent) examined at hospitals had been referred by the police. One in 10 referrals for victims of both sexes known to child protection workers had been initiated by the police.

## Summary

When the findings concerning the lengths of time taken by victims to notify public services and the patterns of interagency referrals are considered with those concerning the types of association between victims and assailants and the nature of the sexual acts committed, it is evident that three distinctive groupings of sexually assaulted children and youths are served respectively by the police, hospitals, and child protection services and other community agen-



cies. The group of victims known to the police constitutes the broadest cross-section in relation to the types of first sexual assaults reported by persons in the nationally representative sample of the Canadian population. Most of the cases investigated by the police had been initiated by victims or by their families and friends, and most of these contacts had been made relatively soon after the assaults had been committed.

The findings of the National Population Survey indicate that when sexually assaulted victims had sought medical care, they had turned to hospitals and physicians in community practice with equal frequency. No information was directly obtained about the patients treated by community physicians, although their reported referrals to various public services were documented. Of the sexually assaulted patients whose experience was documented in the National Hospital Survey, a majority had sought care relatively promptly, and in comparison with the proportional distribution of sexual acts known to the police and child protection services, more medically examined patients had been victims of acts of vaginal and anal penetration, or of attempts made to commit these kinds of sexual acts. The two main sources of referrals of victims to hospitals consisted of those which they or their families had initiated, or of those made by public services and professional workers.

In comparison to how victims became known to the police or hospitals, most of the contacts by sexually assaulted children known to child protection workers had been initiated by what may be termed a 'professional referral system'. A majority of these victims had been assaulted by family members or relatives and a sizeable proportion of the incidents had occurred weeks, or even months, before they became known to child protection workers.

**In the Committee's view, the complex problems and risks experienced by sexually assaulted children and youths require the effective investigation, care and protection afforded by several of the helping professions, notably the police, physicians and child protection workers. The help afforded these young victims optimally involves sensitive and caring attention provided by as few persons as possible whose efforts are strongly complemented by other requisite services to ensure the best possible treatment and protection for the child.**

The general findings of the Report consistently underscore the need for a more comprehensive and integrated approach to the care and protection of sexually assaulted children and youths. Elsewhere in the Report, a number of co-operative interdisciplinary and/or interagency programs are described which have been established in different regions of Canada in order to provide assistance and protection for victims of sexual assault. On the basis of the Committee's research findings, it is evident that little is known about which of these different types of programs most effectively benefit and protect sexually assaulted children.

In this regard, the findings presented in this chapter strongly support the Committee's recommendations about the need for more complete documentation about the operation and effectiveness of existing interdisciplinary and/or



interagency programs, for the education of professional workers and for informing the public about the availability of different services.

The significance for social policy of these findings is that if better protection is to be afforded children and youths who are victims of sexual assault, the Committee believes that this purpose is more likely to be achieved by a realignment and strengthening of those public services which are the most frequently turned to and trusted than by the extension of infrequently used services or the establishment of new programs.

## References

### Chapter 7: Dimensions of Sexual Assault

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- <sup>16</sup> Kinnon, D., *op. cit.*, pp. 28-29.
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## Chapter 8

# Acts of Exposure

In contrast with other sexual offences, acts of exposure do not involve physical contact between an offender and a victim. In the study of sexual offences, the term, “exhibitionism”, is typically defined as a means of obtaining sexual gratification involving the exposure by a male of his naked body and/or genitalia to a female. In most clinical studies, it is concluded that exhibitionists do not intend to touch or sexually molest their victims. When acts of exposure are committed, there is usually some distance between the offender and his victim(s). The exposure of the genitalia may be partial or complete and the act may also involve masturbation. Part of the gratification that offenders are believed to seek derives from the reactions of their victims which may range from annoyance and surprise to shock and fear.

Section 169 of the *Criminal Code* provides that it is a criminal offence wilfully to commit an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person. In section 138 of the *Criminal Code*, a “public place” is expressed as including any place to which the public has access as of right or by invitation, express or implied. Where, for example, a male person in a public place exposes his genitalia to unsuspecting passers-by, the section 169(a) charge is made out. Where the same act occurs in a place other than a public place (hereinafter referred to as a “private place”), however, the defendant’s intent to insult or offend any person must be proved. The offence of indecent act is thus concerned to regulate both acts of a publicly offensive nature, regardless of the individual’s intent and acts, wherever committed, where the individual intended to insult or offend any person.

A number of different sexual acts and situations can be dealt with under the section of the *Criminal Code* which proscribes the committing of indecent acts. Accordingly, the listing of the offence of indecent act in police and crime statistics is not a useful source by itself in documenting this type of sexual act. What is required is the specific identification of the acts committed. Some of the elements of an indecent act, as set out in the *Criminal Code*, are that these acts are committed “in a public place in the presence of one or more persons,” or “with the intent thereby to insult or offend any persons”. No definition is given in this section of the *Criminal Code* of the exact nature of the type of act

which may insult or offend another person. In this regard, the current criminal offence under which acts of genital exposure are typically charged (section 169 of the *Criminal Code*) applies to very different sorts of behaviour, for example, running naked down a city street as a prank (“streaking”) or baring one’s buttocks as a prank (“mooning” or more forcibly, “chucking a moon”). Under the terms of this section, such acts may be committed by members of either sex and victims may be males or females.

The offence of “gross indecency” in section 157 of the *Criminal Code* may also give rise to a public place/private place legal controversy. Although the location of the act is not an element of this offence, where both parties are over 21 and the consensual act occurs in private, this is a complete defence for both accused. Since the “private” nature of the consensual act is only relevant where both parties are 21 or older, it has no relevance to consensual acts in private involving a young person (i.e., a person 20 or younger). Accordingly, no special analysis is provided in this regard for occurrences of “gross indecency”.

In medical research, the definition of “exhibitionism” which is widely adopted rules out situations where an exposure occurs as part of other activities, such as swimming in the nude, undressing immediately before consensual sexual activity or as a prelude to a sexual assault. Where an exposure precedes a sexual assault, it is usually subsumed within the more serious sexual offence. The medical definition of exhibitionism specifies that only males commit these acts and that victims are exclusively females. Acts of exposure by males to male victims are excluded, by definition, and may be considered pedophilic acts undertaken to have physical sexual contact with a male child or youth. The clinical definition also excludes acts where parts of the nude body other than genitalia are exposed.

A distinction can be made between acts of exposure where an offender actively seeks out victims, and those where an offender exposes his genitalia or masturbates and is observed by another person. In the former type of act, an exposer deliberately seeks out victims, while in the latter instance, a victim happens to observe an offender standing naked at a window or exposing his genitalia while lying in a park.

In order to avoid confusion with respect to terms previously assigned special meanings, such as indecent acts and exhibitionism, the term “exposure” is used in this Report to denote the display of a nude body and/or genitalia to another person.

In its research, the Committee found that acts of exposure constituted a sizeable proportion of all sexual crimes committed against children and youths. Two types of situations were reported which fell outside of the clinical definition of exhibitionism. These incidents included: a few cases of exposure to boys; and a number of separate acts of exposure which preceded a sexual assault against the child.



In the cases of exposures to boys, there was no reported physical contact between offenders and victims. For this reason, it would have been inappropriate to group these acts in the analysis of sexual assaults against children, as while it may have been the intention of these exposers to touch or sexually molest male victims, no physical contact was made. Incidents of this type are usually considered to be part of the sequence of sexual behaviour that comprises homosexual pedophilia, and from this perspective, they would be set aside as not being true cases of exhibitionism. In this context, one study on exhibitionism noted "the limited usefulness of legal and criminological statistics as indicators of clinical entities, since clinically the term exhibitionism only applies to males."<sup>1</sup>

The Committee's findings indicate that acts of exposure to boys do in fact occur and that, for whatever reasons, they are not followed by an assault. The occurrence of these acts cannot be ignored merely because they do not conform to a particular definition. Rather than attempting to presume what the intentions of these exposers might have been, findings about these incidents are presented with the review of acts of exposure to girls.

The medical definition of exhibitionism that is commonly used specifies no bodily contact occurs between an offender and a victim. In one report, for instance, this act is defined as "the expressed impulse to expose the male genital organ to an unsuspecting female as a final sexual gratification", and it is further noted that "exposure is the final act and *not* a prelude to other acts".<sup>2</sup> When acts of this kind are committed, the assumption is that there is usually some distance between offenders and victims.

In the Committee's research, a number of instances were reported where an act of exposure was subsequently followed by an attempt to touch or assault a child. In reviewing these incidents, it was apparent that two discrete acts had been committed. Incidents involving undressing or exposure by an offender as a prelude to an assault were excluded from this group of offences. Incidents of this kind are reported in Chapter 9 (*Exposure Followed by Assault*).

Because substantially more cases of acts of exposure were documented in the population and police force surveys than in those of hospital and child protection services, the Committee's main findings on these acts are taken from the first two national surveys, and particularly from the National Police Force Survey where the most detailed findings were available. These two national surveys provide information on the experience of a representative sample of Canadians and of the public agency to which many of these incidents are reported. The Committee's findings on acts of exposure differ from the sources of information drawn upon in a number of other reports of this offence in relation to: documenting directly the experience of children and youths who have been victims; the use of a uniform definition in the national surveys about specific sexual acts committed; and the number of cases for which information was assembled. As there appears to have been relatively little research dealing directly with the experience of children who have been exposed to, the findings in this chapter, where appropriate, are compared with the results of four main



studies on these offences, two of which were undertaken in Canada. These studies are:

1. *1956-59 Toronto Forensic Clinic Study*. A total of 54 exhibitionists referred by courts between 1956-59 to the Forensic Clinic of the Toronto Psychiatric Hospital;<sup>3</sup>
2. *1957 British Study of Sexual Offences*. Part of a larger English study of sexual offences, this definitive report assembled information on 786 cases of indecent exposures brought before courts, 389 of which had girls under 16 years of age as victims;<sup>4</sup>
3. *1961-62 Toronto Police Force Study*. Part of a larger review of sexual offences, a total of 125 cases of persons charged with having committed indecent acts by the Toronto Police Force were studied, of which 87 were exhibitionistic acts.<sup>5</sup> The ages of 70 victims of these acts were reported, of whom 36 were 14 years-old or younger; and
4. *1965 U.S. Study of Convicted Sex Offenders*. One of a series of reports from the Institute for Sex Research established by A.C. Kinsey, a comprehensive analysis of convicted sexual offenders, of whom 288 were exhibitionists.<sup>6</sup> Of this number, 49 males had exposed to girls 15 years-old or younger.

None of these studies obtained information directly from victims themselves. In each instance, such information was derived from official records or had been reported by the offenders.

## Case Studies

The case studies of acts of exposure to children taken from the National Population Survey and the National Police Force Survey illustrate the types of situations in which these offences are committed.

- *Nine year-old girl*. While walking down a street, this girl was called over to the suspect's car parked at the curb. He asked if she wanted a sausage with cream on it. The suspect then raised himself and exposed his penis.
- *11 year-old girl*. As she was walking along a path, she saw a male jogger wearing shorts who was running towards her. He stopped abruptly in front of her, pulled down his shorts and exposed his penis. He asked if she had ever seen a penis. The girl fled.
- *Eight year-old boy*. While walking home from school, this boy cut through a laneway where a small car was parked. The driver called the boy and then exposed his penis. The boy ran.
- *12 year-old girl and friend*. As these children were walking along a street, they were approached by a man who stopped in front of them. He unzipped his trousers, exposed his penis, masturbated and moved closer to them. The girls asked if he was having "fun". He replied "yes", and then he fled.
- *33 year-old printing shipper*. When she was three, her godfather who worked for a hydro company exposed to her. Later, when she was 22, she wrote: "I did tell my husband. He phoned the police, but no action was

taken. There are a lot of us women. If nothing was done years ago, it sure won't change now. It is always the woman's fault, no matter what she looks like."

- *14 year-old girl.* This teenager was sitting in a bus shelter when a man entered. After pacing up and down, he opened his trousers, pulled out his penis, pointed it at her and said "do you want to play with it?" The girl fled.
- *11 year-old boy.* While he was fishing by a stream in a ravine, a stranger approached, pulled down his trousers, and exposed his penis. He asked the boy "do you like it?" The boy told him "to get lost" and then he fled.
- *Group of boys and girls, ages 4-6.* The children were playing in the yard of a daycare centre when the suspect, a male, jumped over the fence. He was nude. Although he was laughing, the children said he was trying to scare them. The attendant chased him away.
- *Nine year-old girl.* As this girl was returning home to the apartment building where she lived, she saw a man lounging by the front door. He mumbled something she didn't hear, so she stopped. He asked her if she would like to earn \$10 by helping him move an air conditioner. As he was saying this, he lowered his trousers and exposed his penis.
- *29 year-old collection officer.* When she was nine, she was exposed to by a stranger; a week later she told her mother. "This has also happened to another member of my family. The police said these people have to be caught in the act to press charges".
- *15 year-old girl and two friends.* These teenagers were sitting on a park bench when they were approached by a 20 year-old male. He stopped in front of them and exposed his penis. The girls told him "to beat it". He didn't and continued to expose himself. He left after a few minutes.
- *46 year-old car inspector.* When he was 15, his girlfriend exposed herself. "The girl wanted me to make love to her, but I never did."
- *13 year-old girl and friends.* These children were about to enter a variety store when they heard a yell from a person in the alley beside the store. When the girl looked around the corner, she saw a man exposing himself and smiling at her.
- *Nine year-old boy.* While this boy was playing in the corridor of the apartment building where he lived, a man entered the corridor with his penis exposed. The boy ran.
- *Seven year old girl and a friend.* These children were walking along the street when the suspect approached them. When he opened his raincoat, they saw that his trousers were tied around his thighs and that his penis was exposed.
- *13 year-old boy.* Upon entering the elevator in the apartment building where he lived, this boy found a man was already in it. When the doors closed, the man pulled down his trousers and exposed himself. The boy pushed the button for the nearest floor, and when the doors opened, fled.
- *13 year-old girl.* On her way home from school, a car slowed down and stopped beside her. The driver asked for directions. When she leaned into the car, she saw that he was masturbating.

- *Eight year-old girl.* When she was playing in a park with friends, this child saw a man sitting on a bench. As she walked past him, he raised the paper from his lap and exposed his penis.

In these accounts, victims engaged in routine daily activities were typically taken by surprise. These young victims had been usually approached by a stranger who either did not speak to them, or if a conversation occurred, the questions initially asked dealt with innocuous issues. Once the attention of the child or youth had been attracted, the offenders, almost invariably older males, exposed their genitalia. There were few instances reported in the national surveys of expositors who were completely nude. In about one in 10 cases, the offender both exposed his penis and masturbated. The case studies show that acts of exposure are made to both boys and girls and to groups of children. There is no indication in these accounts that, in incidents where boys were victims, there was a confusion about the identity of the boys' sex on the part of expositors.

In most cases where children had been victims, the offenders had deliberately approached them or actively sought to attract their attention. It is evident from the case studies that expositors frequented places, usually streets or parks, where children were likely to pass by or congregate. While the children were taken off-guard by the unexpected nature of these incidents, most of them immediately fled. In a few instances, the children made fun of, or disparaged, offenders, and a few were likely too young at the time to realize the meaning of what had happened. The case reports also show, a finding confirmed by the results of the national surveys, that children of all ages may be victims of acts of exposure, with some being very young children.

## Extent of Occurrence

Each person contacted in the National Population Survey was asked, "Has anyone ever exposed the sex parts of their body to you when you didn't want this?" Persons replying affirmatively were further asked how old they had been when acts of this kind had first happened to them and to specify which parts of the offender's body had been exposed, including: penis, woman's crotch, breasts, buttocks, nude body and "other-specify".

The results of the National Population Survey summarized in Chapter 6 indicate that **about one in seven persons (14.3 per cent) had been a victim of at least one act of exposure during his or her lifetime and that females (19.7 per cent) were twice as likely as males (8.9 per cent) to have been victims.** If the findings of this nationally representative sample are prorated as a basis for estimating the occurrence of acts of exposure against all Canadians, then several million persons may have been victims of these kinds of acts.



# Sex of Victims

It has been consistently reported in the research on acts of exposure that only females are victims and that none is subsequently sexually assaulted. An inherent assumption underlying this research is that the intent of an exposor is known when such an act is committed. In incidents where a female is the victim, it is assumed that the act is the final sexual gratification for the offender and that he has no intent of subsequently committing an assault. Conversely, in incidents where males may be victims, the assumption is made that such acts are a prelude to an intended or actual touching or assault.

When an act of exposure occurs, it is unclear from available research reports: how often the acts involve only exposure; how often they are followed by an assault; or how often this sequence may be interrupted by the reactions of victims or detection by other persons. Since each of these situations happens, their subsequent classification as acts of exhibitionism, homosexual pedophilia or other types of offences involves a retrospective assumption about the intentions of offenders which are often unknown since many exposors are not apprehended.

An anomaly in this research is that it deals almost exclusively with the experience of female victims. There is no similar body of research which documents acts of exposure committed by offenders against males, whether these acts involve only exposures, or whether they are a prelude to a touching or assault. When such findings have been reported, they have been discounted as errors of classification. Until information is available on all types of acts of exposure, it cannot be assumed *a priori* that: only females and no males are the victims of acts of exposure; when these acts are committed against females, no subsequent sexual assault is intended or committed; and when males are victims, acts of exposure are invariably a prelude to a touching or an assault.

In the national surveys undertaken by the Committee, information was obtained about whether exposure of genitalia and the nude body had occurred and the findings obtained indicate that in each of these surveys both males and females were reported to have been victims of these acts.

In comparison to the findings of the National Population Survey, proportionately more females and fewer males were reported to have been victims of acts of exposure in the three national surveys of public services. The smallest proportion of male victims, about one in 13, was reported in the National Police Force Survey; two in three (66.4 per cent) had been recorded as indecent assault male. Since much of the research on acts of exposure has been based on an analysis of the offence of indecent act, the results given here may partially explain the widely held belief that offences of this kind are not committed against males. The findings of the population and police surveys with respect to the sex of victims are confirmed by the findings of the hospital and child protection surveys where respectively it was found that one in six (17.5 per cent) and one in nine (10.7 per cent) victims were males.

National Survey	Acts of Exposure	
	Male Victims	Female Victims
	Per Cent	Per Cent
Population	31.0	69.0
Police Force	7.5	92.5
Hospital	17.5	82.5
Child Protection	10.7	89.3

The results of the national surveys confirm the findings of other studies that females are predominantly the victims of acts of exposure. While the number of incidents involving boys is small, this finding is unexpected in light of the results of most research reports on exhibitionism. The findings indicate that acts of exposure are committed against boys which are not followed by an assault.

## Age Distribution

In the research on exhibitionism, it has generally been found that between one in five and one in two victims are children. Depending upon the source of the information, the age range of the children has varied, but instances have been reported where children two years or younger have been exposed to by an offender. In the cases documented in the National Police Force Survey, the average age of the children who were age 15 years or younger was 11.3 years for girls and 9.8 years for boys. Proportionately more younger boys than younger girls were the victims of acts of exposure, with one in five boys (20.5 per cent) and one in 15 girls (6.5 per cent) having been six years-old or younger. Some of these children were infants. Among the young girls, three were two years-old or younger; eight were three years-old; 13 were four years-old; 29 were five years-old; 46 were six years-old; and 71 were seven years-old.

Less than half of the girls (45.4 per cent) who had been exposed to were 11 years-old or younger, while over half (54.6 per cent) were between 12 and 15 years-old. In contrast, about one in nine of the boys (11.5 per cent) who were 14 and 15 years-old had been exposed to by another person.

The findings of the National Population Survey indicate that **a majority of the victims of acts of exposure were children or youths when these kinds of acts had been committed against them for the first time.** Accumulatively, about half of the victims had been under 16 years-old, two in three had been under 18 years-old and five in six had been under 21 years-old. Only one in six victims had been an adult when he or she had been exposed to for the first time.

## Time of Occurrence

As was the case for sexual assaults against children, there were seasonal and time-of-the-day variations when acts of exposure were committed. Depending upon the sex of the victim, the trends were somewhat different for acts of exposure and sexual assaults. There was a somewhat more uniform seasonal distribution of acts of exposure than of assaults when girls were victims, and during the summer and autumn months, proportionally more boys had been exposed to than had been sexually assaulted. Also, unlike the relatively even distribution of sexual assaults occurring during the days-of-the-week, proportionately more acts of exposure were clustered during weekdays with fewer reported on weekends.

The 1961-62 study of the general occurrence records of the Toronto Police Force found that the seasonal distribution of indecent acts was "more or less random."<sup>7</sup> However, there was a peaking in the occurrence of these offences during the summer months (31.5 per cent). In the present study undertaken two decades later, a similar peaking in the number of acts of exposure reported to the police occurred during the summer months.

Seasons	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Spring	23.7	26.6
Summer	33.9	28.5
Autumn	26.3	25.4
Winter	16.1	19.5

Not unexpectedly, cold Canadian winters are a partially effective deterrent which afford protection to children from acts of exposure. With the exception of this season, the results suggest that children are at risk of being exposed to all times of the year.

In the day-of-the-week reporting of sexual assaults to 28 police forces across Canada, there was a relatively random occurrence of these offences with a slight peaking occurring on Saturday. In contrast, acts of exposure reported to the police occurred more frequently on weekdays and less often on weekends than did assaults against children.

For both boys and girls, four in five offences happened between Monday and Friday, a trend comparable to the results (85.7 per cent) of the 1961-62 Toronto study of persons charged by the police for having committed these acts.<sup>8</sup>



Day of Week	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Sunday	10.4	8.1
Monday	8.6	14.8
Tuesday	25.0	15.4
Wednesday	11.2	17.8
Thursday	18.1	16.2
Friday	17.2	16.4
Saturday	9.5	11.3

In contrast with the time-of-the-day occurrence of sexual assaults against children, of which about three in five occurred during the morning and afternoon, four in five (80.7 per cent) acts of exposure were committed during daylight hours. These results are hardly surprising, since this is the time of the day when children play outside their homes or travel to and from school.

Time of Day	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Morning (5 a.m. — 12 p.m.)	15.5	16.4
Afternoon (12 p.m. — 6 p.m.)	63.6	64.4
Evening (6 p.m. — 10 p.m.)	15.2	16.2
Night (10 p.m. — 5 a.m.)	2.7	3.0

Although slightly different time-of-the-day periods were used in the 1961-62 Toronto Police Force study<sup>9</sup> and the National Police Force Survey, the results of the two studies are comparable. In both instances, most of the acts of exposure occurred during the daylight hours.

## Where the Offences Occurred

The classification of locations where acts of exposure occurred is identical to the listing of locations used in the review of sexual assaults against children. In this listing, a private place was defined to include: the residences of victims, suspects or offenders and third parties; and an assortment of other places, such as hotel or motel rooms. All other locations where these acts were committed are considered to be public places generally accessible to all persons.

There is a broad agreement in the research on acts of exposure that a majority of these offences are committed in “open” places or involves offenders exposing themselves at windows or doors facing other houses or streets. When only acts of exposure to females are considered (for purposes of comparability), the results of several of the main studies on these offences are remarkably similar in relation to the proportion of acts reported to have been committed in open places. These findings are given in Table 8.1. When the categories of Open Spaces, Streets/Laneways and Other Places are grouped together, the proportion of acts of exposure occurring in these locations was:

- 77.1 per cent — 1957 British study
- 74 per cent — 1956-59 Toronto Forensic Clinic study
- 73.9 per cent — 1961-62 Toronto Police Force study
- 74.3 per cent — National Police Force Survey

The comparability of these results confirms that three in four of these acts occur in open places. However, the results differ sharply in terms of where the remaining one in four acts had occurred. The two larger studies (1957 British study and the 1981-82 National Police Force survey) found respectively that 6.9 per cent and 5.3 per cent of the acts were committed from an offender’s car. In contrast, the two smaller studies (1956-59 Toronto Forensic Clinic and 1961-62 Toronto Police Force study) reported that between 30 and 41.3 per

**Table 8.1**  
**Location of Acts of Exposure to Females<sup>1</sup>**

Location of Acts	Research Report			
	1957 British Report (n=462)	1956-59 Forensic Clinic (n=54)	1961-62 Toronto Police (n=92)	National Police Force Survey (n=1,495)*
	Per Cent	Per Cent	Per Cent	Per Cent
Open spaces	30.5	8.0	15.2	23.8
Streets	46.6	36.0	17.4	50.5
Houses:				
• Within houses	2.6	{ 11.0	{ 18.5	{ 8.5
• From houses	10.8			
Vehicles	6.9	30.0	41.3	5.3
Other Buildings, Places	2.6	13.0	7.6	11.9
Total	100.0	98.0	100.0	100.0

<sup>1</sup> For comparability with other reports, only the experience of female victims is given from the National Police Force Survey.

\*No listing of location for 7 cases.

cent of the offences had been committed by offenders who were in cars. Based on its findings that about a third of the exposures had occurred from an offender's car, the 1956-59 Toronto Forensic Clinic study concluded that:

"the compulsion to exhibit is greater than the fear of police or court . . . offenders exposing from a car leave a visiting card behind them in the form of their licence number."<sup>10</sup>

Findings such as these have been drawn upon by several observers to support the conclusion that when the impulse to expose occurs, it is unrestrained and transcends any rational concern or fear of being caught while the person is committing the act. Indeed, it has been suggested that some of the offenders may even wish to be apprehended.

The differences between these research findings in relation to the proportion of offenders exposing themselves from vehicles may be partly accounted for by the differences in the ages of the victims studied and by the fact that in two larger studies, the experience of children who were victims was documented for a number of different cities and towns. Children who were female victims constituted: 49.5 per cent of 786 victims in the 1957 British study; 41.8 per cent of 55 victims in the 1956-59 Toronto Forensic Clinic study; 51.4 per cent of the victims in the 1961-62 Toronto Police Force study; and (excluding 122 male victims), all (100.0 per cent) of the 1,502 victims under age 16 in the National Police Force Survey. With respect to these age differences, it may be the case that more exposures to adult females than those to children occur from vehicles.

In the case of the two smaller studies, how the cases were selected may also partially explain the differences that were found. In one instance, the study group comprised offenders referred for psychiatric assessment. In the second study, the cases were selected from the records of one police force on the basis of persons charged with having committed indecent acts.

Neither the findings of the 1957 British study nor the National Police Force Survey appear to support the conclusion that exposers wished to be caught or were unconcerned about hiding their identities. In both studies, only between one in 15 and one in 19 of the exposures were committed from an offender's vehicle. These findings suggest that in many instances the impulse to expose, while being reported to the police to have occurred in a public place, may not have been done with the intent of being caught or of leaving "a visiting card". An implication of these results is that many exposers knew what they were doing, for as the 1956-59 Toronto Forensic study noted: "the deviation is not a symptom of mental illness or mental defectiveness".<sup>11</sup>

About one in four acts of exposure was committed by exposers in private or public buildings. In the 1957 British study, 2.6 per cent of the exposures to females were in private houses, and 10.6 per cent were exposures by offenders from private dwellings to female neighbours in other houses or to females passing by. In the 1956-59 Toronto Forensic Clinic study, about one in nine acts occurred in private dwellings or emanated from these locations to persons in



other houses or on the street. Allowing for the differences in the classification of locations in these studies, the results of the National Police Force Survey were of the same order, with 8.5 per cent of the acts against girls under 16 years-old reported to have occurred in or from private places.

Of acts of exposure reported in the National Police Force Survey, about three in four acts against girls occurred in open places, while among the considerably smaller number of male victims, about two in three acts had been committed in similar locations. Girls were about twice as likely as boys to be exposed to on the street and, with one exception, girls were the victims of all exposures committed by offenders from vehicles.

**Of exposures to girls, nine in 10 were committed in public places, and one in 12 (8.5 per cent) in private places. In contrast, among the much smaller number of boys, one in six acts (15.7 per cent) occurred in private places.** While the proportion of the incidents committed in private places is small, it serves as a reminder that not all acts of exposure are committed in public places.

## Types of Acts

In the National Population Survey, the victims of acts of exposure were asked to specify which parts of an offender's body had been displayed when the incidents occurred. The results obtained are non-accumulative since when acts of this kind are committed, more than one part of an exposor's body may have been uncovered.

Parts of Body Exposed to Victims	Victims of Acts of Exposure		
	Male Victims	Female Victims	Total
Penis	45.0	98.8	82.5
Woman's crotch	33.3	4.7	13.4
Breasts	55.9	7.8	22.4
Buttocks	49.5	19.2	28.4
Nude body	51.4	16.9	27.3

When acts of exposure are committed, the penis is the part of the body that is most frequently displayed. Exposure of the male genitalia occurred in virtually all acts (98.8 per cent) against females and in over two in five (45.0 per cent) incidents where males were victims. The exposure of the nude body occurred in about one in six incidents (16.9 per cent) where a female was a victim and in about half (51.4 per cent) of the exposures to males.

In contrast to the small proportion of female victims who reported the exposure of buttocks and breasts, about half of the male victims reported the display of these parts of the body. Less than one in 20 female victims reported

that a woman's crotch had been exposed, while acts of this kind were reported by one in three male victims.

## Age and Sex of Exposers

It is a widely held belief confirmed by available research reports that acts of exposure are primarily committed by males against female victims. In contrast to this assumption, the findings of the national surveys indicate that both males and females may be exposers and that persons to whom exposures may be made are of both sexes.

In the National Population Survey, it was found that on the basis of the types of acts committed that about one in 13 exposures to females had been by females, and in the instance of exposures of a female's crotch, one in 20 females who had experienced any type of exposure reported that this type of sexual act had occurred to them.

Of the much smaller group of males reporting exposures, over half indicated that females had been involved in these acts and one third reported the unwanted exposure of a female's crotch. Overall, the findings of the National Population Survey indicate that of all persons reporting exposures, about four in five (77.6 per cent) had been by males and one in five by females (22.4 per cent).

When the findings of the National Population Survey are compared with those of the National Police Force Survey, a striking shift occurs in relation to the sex ratio of reported exposers. In the latter national survey, the overwhelming preponderance of persons committing acts of exposure to children were reported to be males (99.6 per cent). Considered together, the findings of the two national surveys suggest that while exposures committed by females occur, relatively few are reported to the police. The findings of the National Population Survey show that male victims are much less likely than female victims to notify authorities of any type of sexual offence committed against them, and the findings on exposures appear to confirm this general trend. What remains insufficiently documented is the nature of the situations in which these different types of exposures may occur, the intentions of male and female exposers and the reactions and consequences for persons involved in these acts.

In two studies on exhibitionism conducted in Toronto between 1956-59 and 1961-62, it was found that most exhibitionists were young men. In the 1956-59 study, 74 per cent of exhibitionists were under 30 years-old and a bimodal age distribution was noted with peaks occurring in the late teens and in the early thirties.<sup>12</sup> In the 1957 British report, 6.5 per cent of the exhibitionists were between 14 and 16 years-old and 6.5 per cent were between 17 and 20 years-old.<sup>13</sup>

Somewhat comparable findings to the trends noted in earlier research reports with respect to the ages of exposers were found in the National Police Force Survey.

Age of Exposers	Males Exposed to (n = 104)		Females Exposed to (n = 1,309)	
	No.	Accum. %	No.	Accum. %
Under age 18	16	15.4	134	10.2
Under age 29	64	61.5	901	68.8

Because the ages of some exposers who were strangers to victims were unknown, or had not been approximately established, no estimates had been made about the ages of 12.9 per cent of offenders. For cases where this information was available, over two in three exposers (68.3 per cent) were believed to be age 29 or younger with this proportion being higher in incidents having girls (68.8 per cent) rather than boys (61.5 per cent) as victims. These findings do not concur with the stereotype that these acts are generally committed by “dirty old men”. Most were committed by young men, of whom one in 10 (10.6 per cent) was under 18 years-old.

## Type of Association

In contrast to assailants whose identity is unknown are those strangers whom the victim has seen before, whose place of work may be identified or who can be associated with particular places or events. Instances of strangers who can be identified are so commonplace that this situation is taken for granted. Examples include persons who travel regularly together on a bus, subway or train, the sales staff in stores, newspaper vendors and waiters, among others. In these situations, while the strangers’ names are unknown, these persons may nonetheless be recognized and a more detailed identification provided.

When acts of exposure committed by strangers occur, the nature of the association between them and their victims directly affects the likelihood of their being apprehended. In the research on acts of exposure, while there is a consensus that most acts are committed by strangers, a distinction has usually not been made whether their identities are known or unknown to victims.

In two Canadian studies on exhibitionism (1956-59 Toronto Psychiatric Forensic Clinic and 1961-62 Toronto Police Force Study), it was found respectively that 92.6 per cent and 94.3 per cent of the acts of exposure had been committed by strangers. The results of the National Police Force Survey on acts of exposure acts were almost identical to those of the earlier reports. Of acts of exposure committed against children reported to 28 police forces, 92.6 per cent of the offenders were strangers. Only a small fraction of these incidents involved family members, friends, persons in positions of trust and persons whom victims knew.

The type of association between the victims and exposers was somewhat different for boys and girls. While over nine in 10 (93.4 per cent) of the expo-



tures to girls had been committed by strangers, this was the case for only about four in five (82.6 per cent) of the acts where boys were victims. While this difference may be partially accounted for by the small number of incidents in which boys were victims, it may also indicate that different circumstances were involved depending on the sex of the child.

Identity of Suspected Offender	Percentage Boys Exposed to	Percentage Girls Exposed to
Acts committed by strangers	82.6	93.4
Identity of suspect unknown	46.7	57.5
Suspect known	53.3	42.5

While the majority (92.6 per cent) of the acts of exposure were committed by strangers, the identity of a substantial number of these persons was known to victims. In the general occurrence records of the 28 police forces, it was reported that in over half (56.7 per cent) of these cases, charges had not been laid because the identity of the suspect was unknown. In the remainder (over two in five — 43.3 per cent), the suspect was known to the police. **The findings indicate that, although most acts of exposure reported to the police were committed by strangers, the identity of the suspected offenders was known in a larger number of incidents of this kind than is often assumed.** As in the instance of sexual assaults committed by a person whom a child knew, in 43.3 per cent of the acts of exposure where the identity of the suspect was known, factors other than the inability of the child to identify these persons determined whether charges were laid.

## Exposure by Groups

Based on the clinical assessment of exhibitionism, the general assumption has been that acts of exposure to females are committed by males who are alone. Acts of exposure committed by these males are believed to be a means of achieving sexual gratification. These men are clinically assessed as being lonely persons unable to achieve adequate sexual relations with females. It is also believed that these persons act impulsively. In this regard, an act of exposure is an outlet for pent-up sexual frustration which cannot be achieved by socially accepted means. The age or appearance of the victim is believed to be secondary to the fact that she is an accessible female who serves merely as an object of sexual release.

Based on the review of the major studies on exhibitionism, it was expected that all of the acts of exposure against children would have been committed by males who were alone. In a majority of the cases of exposure reported in the National Police Force Survey, this assumption was valid. Well over nine in 10

(98.5 per cent) of exposures against children 15 years-old or younger were committed by offenders acting alone. This proportion was somewhat higher than that of sexual assaults against children committed by single assailants who were alone (93.8 per cent).

Number of Suspected Offenders	Males Exposed to		Females Exposed to	
	Number	Per Cent	Number	Per Cent
One	117	95.9	1482	98.7
Two	4	3.3	12	0.8
Three	1	0.8	2	0.1
Four	—	—	2	0.1
Not Reported	—	—	4	0.3

An unexpected finding in the review of the acts of exposure committed against children was that in 21 incidents two or more males were reported to have exposed themselves to young victims. In the 16 incidents where girls were victims, 12 had two offenders, two had three offenders and two had four offenders. There were five incidents of group exposure to boys. Four of these exposures were by two suspected offenders and there was one instance in which three offenders were involved.

In 19 of the 21 incidents involving group exposure to children, information on the ages of the exposers was available. The age range of these offenders was between nine and 23 with their average age being 16.5 years.

Acts of exposure may serve somewhat different functions when they are committed by two or more persons against a victim. In these instances, it appears that they may be undertaken by a juvenile gang as an initiation ritual, as a means of harassing a victim regarded as aloof or unapproachable or as a prelude to a group sexual assault. In these respects, although exposures occur, they are undertaken neither on impulse nor necessarily as a means of final sexual gratification. Rather, incidents of this kind appear to be premeditated and are likely to be undertaken in order to demonstrate sexual prowess and virility.

## Alcohol and Drugs

Exhibitionism is listed under disorders of character and behaviour in the *International Classification of Diseases*, and as a result of this classification, persons who expose themselves are nominally considered to be ill. Despite this inclusion as a form of sexual deviation, the clinical research on exhibitionism suggests that few exposers have identifiable mental disorders. In the 1956-59 Toronto Forensic Clinic Report, none of the 54 exhibitionists was assessed as having a psychotic illness, one patient was diagnosed as psychoneurotic and

nine had disorders of behaviour and character.<sup>15</sup> In the 1965 United States Study of *Sex Offenders*, about three per cent of 288 exhibitionists had had a history of mental disorders.

The findings of these studies suggest that few exposers have identifiable mental disorders. There is less agreement, however, about the extent to which exposers may have been under the influence of alcohol or drugs when they exposed themselves to victims. Sharply contrasting results have been reported on this point; these differences may partially be accounted for by whether the persons studied had only been charged and referred for assessment, or whether they had been sentenced to imprisonment.

In the 1956-59 Toronto Forensic Clinic study, only one exhibitionist (1.9 per cent) was reported to have been under the influence of alcohol when the offence had been committed.<sup>16</sup> In contrast, of the 288 exhibitionists whose backgrounds were reported upon the 1965 United States Study of *Sex Offenders*, nearly a third had been drunk and an additional eight per cent had been partially intoxicated when they had committed the offence. Only three of the exhibitionists in this study of convicted offenders were reported to have been drug-users.<sup>17</sup>

The results of the National Police Force Survey on the extent to which alcohol and drugs were reported to have been used by exposers were comparable to the findings of the 1956-59 Toronto Forensic Clinic Study. The results of both studies suggest that of exposers investigated by the police, few had been using alcohol and drugs before or at the time of the incident. As was the case for sexual assaults against children, this information is based on police reports. It is a reasonable assumption, however, that if the police had known that alcohol or drugs had been used, this information would likely have been reported in their accounts.

Few of the children exposed to were reported by the police to have been drinking or using drugs when the exposures occurred. Of the 1,502 girls under age 16, only nine (0.6 per cent) had been using these substances. Five of the girls had been drinking alcohol, two were using drugs, and two were reported under the influence of both drugs and alcohol. None of the boys was reported to have been drinking or using drugs.

Less than two in 100 exposers (1.7 per cent) were known to have been under the influence of alcohol or drugs. Of the persons who exposed themselves to girls, 21 had been drinking, two had been using drugs, and two had used both substances. In only three cases where boys were victims was it known that exposers had been drinking; none was reported to have used drugs. If these findings are considered only in relation to suspects whose identities the police knew, then 3.6 per cent of the exposers to girls and 4.6 per cent of exposers to boys were reported by the police to have been using alcohol and/or drugs.

On the basis of the findings from the National Police Force Survey, it appears that the use of these substances is seldom a factor serving to loosen the inhibitions of exposers, and thereby, affecting their mental state.



## Time Taken to Report Exposures

In the National Police Force Survey, over four in five (84.1 per cent) children exposed to either had contacted the police directly or had told members of their families. While boys were somewhat more likely than girls (52.5 per cent and 39.6 per cent respectively) to tell members of their families, proportionately more girls (13.4 per cent) than boys (3.2 per cent) had turned to friends or told teachers and school counsellors.

None of the children exposed to was reported to have contacted a doctor, nurse or other health worker; there was one instance where a girl had contacted a child welfare worker.

The findings concerning persons who notified the police were generally similar to the identities of those whom children had told immediately following an incident. While the majority of complaints (87.2 per cent) were reported by the victims themselves or by members of their families, there were differences in this respect whether girls or boys had been victims. Perhaps reflecting the fact that girls on average were older than boys, almost half (46.7 per cent) were reported to have directly contacted the police. In about a third (35.0 per cent) of these cases, their families had done so on their behalf. In contrast, less than a third (30.3 per cent) of the boys had gone directly to the police; in over half of the exposures to boys (56.6 per cent), their families had laid these complaints.

Relatively few persons unrelated to children had laid complaints on their behalf. Of girls who had been exposed to, about one in nine of the complaints (10.9 per cent) had been made by friends or school personnel, a proportion one and a half times larger from these sources than incidents in which boys had been involved (6.5 per cent). None of the complaints involving acts of exposure was laid by health workers; there was only one complaint laid by a child protection worker.

In the National Police Force Survey, slightly over half of the cases of sexually assaulted children had been reported to the police within 24 hours after the incidents occurred. In contrast, over nine in 10 (93.9 per cent) of exposures to children were reported to the police within a day of their occurrence with this step having been taken as promptly whether girls (94.1 per cent) or boys (92.0 per cent) were victims. These findings are comparable to the results of the 1961-62 Toronto Police Force Study where it was found that 88.8 per cent of indecent acts involving children and adults as victims had been reported to the police within 24 hours.<sup>18</sup>

## “Founded” Exposures

Of acts of exposure in which children were victims, virtually all (99.1 per cent) investigated by the police were listed as “founded” occurrences. This pro-

portion is slightly higher than that involving sexual assaults against children. As was the case with respect to sexual assaults, the findings show that the police trusted the accounts reported by children. There were only 14 incidents listed as "unfounded" occurrences.

## Charges Laid

Considering the fact that most acts of exposure had been committed by strangers, it is not surprising that charges were only laid by the police in one in five cases (20.0 per cent). The frequency with which this was done was comparable whether boys (20.5 per cent) or girls (20.0 per cent) were victims. However, as was the case for sexual assaults against children, the fact that more charges were not laid by the police is only partially accounted for by the identity of suspected offenders not being known to the police. The identity of the suspect was known in over two in five cases (43.3 per cent), indicating that in one in five instances, factors other than lack of knowledge of the suspects' identities precluded charges being laid.

## Acts of Exposure and Indecent Acts

In the National Police Force Survey, information was obtained about: the types of sexual acts committed against children; the listing of the offences recorded in the police general occurrence records; and the charges laid. For each type of information, more than one item might be reported (e.g., children who were victims of more than one assault, or cases where several charges may have been laid).

In some studies on exhibitionism, the assumption has been made that the listing of the offence of indecent act in police records or charges laid of indecent acts are synonymous with an act of exposure having been committed. On the basis of the findings obtained in the National Police Force Survey, it is evident that the offence of indecent act is on occasion used by the police to include sexual behaviour other than acts of exposure.

Information was obtained in the National Police Force Survey about a total of 6203 sexual offences against children and youths under 21 years-old. Of this total, multiple offences were reported by the police to have occurred in one in 18 incidents (5.6 per cent). In all other cases (94.4 per cent), a single offence was recorded, and it was on the basis of this information that a review was made of the type of offence reported by police in relation to acts of exposure committed. As noted previously, only acts of exposure not associated with other types of sexual offences constitute the acts considered here.

Of all acts of exposure reported to have been committed against persons under 21 years-old, four in five (78.9 per cent) were listed as an offence of indecent act in police records. For slightly more than one in five acts of expo-

sure (21.1 per cent), the police general occurrence records listed other types of offences. The point is reiterated that in none of these instances was there an indication that a child or youth had been touched or assaulted with the information provided indicating that only an act of exposure had occurred.

Acts of exposure where offences other than an indecent act had been listed included the following crimes.

Offences Listed with Respect to Acts of Exposure	Number	Per Cent
Rape	27	1.0
Attempted rape	18	0.7
Intercourse with Female Under age 14	9	0.3
Intercourse with Female 14 and 15 years-old	8	0.3
Indecent Assault Female	311	12.0
Indecent Assault Male	81	3.1
Incest	10	0.4
Intercourse with Step-Daughter/Ward	1	{ 0.1
Buggery	1	
Gross Indecency	41	1.6
Indecent Act	2051	78.9
Contributing to/JDA	41	1.6
TOTAL	2599	100.0

In four in five incidents (80.0 per cent) involving an act of exposure, no charges were laid either because the suspects' identities were unknown or for other reasons. For the one in five cases involving only an act of exposure in which charges were laid, in one in six (17.5 per cent) of these incidents were charges other than indecent act laid. In none of these cases did the police records report that an assault had occurred. The charges other than indecent act which were laid included: rape; indecent assault female; indecent assault male; gross indecency; and, contributing to (*Juvenile Delinquents Act*).

Of the incidents of group exposure to children, 14 charges were laid against seven males. These charges included: indecent assault female; indecent assault male; gross indecency; indecent act; and contributing to (*Juvenile Delinquents Act*).

These findings confirm that with respect to the listing of offences in police general occurrence records, **it cannot be assumed that the offence of indecent act is synonymous or interchangeable with acts of exposure.** While this was true in relation to the police classification of a majority of the incidents of this kind, the exceptions to this rule show that not all acts of exposure are identified by the police as indecent acts, and conversely, that charges of indecent act may include types of sexual behaviour other than acts of exposure.



## Summary

1. Acts of exposure constitute the largest single category of all types of sexual offences committed against children and youths. In the National Population Survey, one in five females and one in 11 males reported acts of exposure, and of sexual offences known to the police, where girls were victims, about two in five were acts of exposure, and in incidents where boys were victims, about one in seven involved exposure by another male.
2. In each national survey, it was found that girls were predominantly the victims of acts of exposure.
3. On the basis of the findings of the National Population Survey, it was found that a majority of the victims of acts of exposure were children or youths when these kinds of acts had been committed against them for the first time.
4. There was a seasonal variation in the occurrence of acts of exposure with the fewest of these offences being reported during the winter. A majority of the acts in which children were victims occurred during daylight hours on weekdays.
5. Three in four acts of exposure to children occurred in open places such as parks or streets. Relatively few were made from a car. About one in 12 was committed in a private place.
6. In most acts of exposure, the penis was the part of the body most frequently displayed.
7. Most exposers were young males.
8. Over nine in 10 exposures to children were committed by strangers, with most of the remainder involving acquaintances or neighbours.
9. Virtually all acts of exposure to children were committed by persons who were alone. Most of the incidents having two or more offenders were committed by youths or young adult males.
10. The use of alcohol or drugs was seldom a factor involved in the commission of acts of exposure against children.
11. Following an act of exposure involving a child, over nine in 10 of these incidents were reported to the police within 24 hours.
12. Of acts of exposure to children reported to the police, almost all were listed as "founded" occurrences. The police knew the identity of two in five suspected offenders. Charges were laid in about one in five reported cases of acts of exposure.
13. The offence of indecent act is not synonymous with an act of exposure having been committed.

The Committee's findings clearly show that acts of exposure are relatively frequently committed and that a majority of victims were children and youths when these acts were first committed against them. Because these acts occur so often, and it is believed that victims are not physically injured, it could be

argued that while exposers commit socially unacceptable acts, they should be tolerated as an unavoidable nuisance about which little can be done.

The Committee rejects the premises of this perspective. All Canadians, not just children and youths, have the right to be protected from exposers. There is insufficient information available about the social and psychological consequences of these incidents upon victims, particularly those who are children. Likewise, there is insufficient information available about persons who are exposers, about how often and over what period of time they may commit these acts and about the efficacy of different services and sanctions used respectively to assist or deter them.

In considering different means whereby victims may be afforded protection from exposers, it is evident that there is an informational vacuum with respect to the occurrence of these offences in Canada. No public service system of classification exists which provides for an accurate and continuous documentation of acts of exposure. Police and crime statistics assemble information on indecent acts which are not synonymous with acts of exposure, and even the listing of these offences is usually grouped with other types of sexual crimes. Furthermore, these official statistics provide no information about victims. Relatively few cases of acts of exposure are medically assessed and the clinical definition of exhibitionism does not encompass the full range of acts committed.

**The central finding from this analysis of acts of exposure is the sheer prevalence of this form of anti-social behaviour, both in absolute and in relative terms.** Given the considerable extent to which acts of exposure of an intentionally insulting nature occur that are committed against children and youths, as documented in both the National Population Survey and the National Police Force Survey, the Committee recommends that such acts should be classified separately and distinctly by the criminal law.

In addition to strengthening the provisions in the *Criminal Code*, the Committee believes that several complementary measures are required if the occurrence of acts of exposure is to be contained or reduced. These measures include establishing the means of more accurately identifying these acts when they are known to have occurred and of educating children and youths about these risks.

**With respect to providing more effective protection for children and youths from unwanted acts of exposure, the Committee recommends that:**

**1. Section 169 of the *Criminal Code* be retained and that the *Criminal Code* be amended to provide that:**

- (i) Every one who, for a sexual purpose, exposes his or her genitals to a young person is guilty of an offence punishable on summary conviction.**

- (ii) In this section, “young person” means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years.
- 2. As part of a national program of education and health promotion, children and youths be informed about these risks, and that this educational program be also undertaken as a preventive measure intended to educate and dissuade potential exposers from committing these acts.



## References

### Chapter 8: Acts of Exposure

- <sup>1</sup> Mohr, J.W., R.E. Turner and M.B. Jerry, *Pedophilia and Exhibitionism*. Toronto: University of Toronto, 1964, p. 114.
- <sup>2</sup> *Ibid.*, p. 115.
- <sup>3</sup> Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*
- <sup>4</sup> Radzinowicz, L., *Sexual Offences. A Report of the Cambridge Department of Criminal Science*. English Studies in Criminal Science. Volume IX, London: MacMillan and Co., 1957.
- <sup>5</sup> Mohr, J.W. and M. Wildridge, *Sexual Behaviour and the Criminal Law, Part IV. Indecent Act - An Examination of the Nature of Offences Under S. 158 of the Criminal Code of Canada*. Toronto: Section of Social Pathology Research, Clarke Institute of Psychiatry, 1969 (mimeo) 30 pages.
- <sup>6</sup> Gebhard, P.H., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*. New York: Harper and Row, 1965.
- <sup>7</sup> Mohr, J.W. and M. Wildridge, *op. cit.*, pp. 17-18.
- <sup>8</sup> *Ibid.*, pp. 18-19.
- <sup>9</sup> *Ibid.*, p. 19.
- <sup>10</sup> Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, p. 119.
- <sup>11</sup> *Ibid.*, p. 116.
- <sup>12</sup> *Ibid.*, pp. 124-125.
- <sup>13</sup> Radzinowicz, L. *op. cit.*, pp. 106-108.
- <sup>14</sup> Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, pp. 159-62.
- <sup>15</sup> *Ibid.*, p. 118.
- <sup>16</sup> Gebhard, P.H. J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *op. cit.*, p. 365.
- <sup>17</sup> Mohr, J.W. and W. Wildridge, *op. cit.*, p. 24.



## Chapter 9

# Exposure Followed by Assault

The different definitions developed in relation to acts of exposure have expanded or contracted the elements that constitute this behaviour. Depending upon which perspective is adopted, conclusions have been reached about whether expositors are harmless or dangerous and about how they might be more effectively managed. Although research evidence suggests that in some instances exposures are a prelude to assaults, it has generally been concluded that exhibitionists seek to achieve final sexual gratification by their acts of self-display.

In undertaking its review of sexual offences against children, the Committee found in its statistical analysis that there were incidents in which both an act of exposure and an assault were reported to have occurred. In order to document these incidents more completely, a case-by-case review was undertaken of all incidents in which exposures were reported in the National Police Force Survey and the National Population Survey.

The results presented in this chapter do not support the widely held belief that all exhibitionists are harmless. Some of them are dangerous. The findings also suggest that when a child is exposed to, there may be neither warning signals nor behavioural clues to indicate whether only an act of exposure is likely to be committed or whether the act is a prelude to some form of sexual assault.

## Assessment of No Danger

A widely adopted clinical definition of exhibitionism specifies that these acts are committed only by males against females and that no form of physical contact occurs. Since this definition precludes any form of touching, the conclusion reached about the character of exhibitionists is hardly surprising, namely, that they are invariably harmless and inadequate persons more to be pitied than to be feared.

Situations in which children may be sexually touched or fondled by an adult are subsumed under the clinical concept of pedophilia. The Greek etymological roots of this term classify these persons as “lovers of children”; the word



has come to be used to denote persons who are sexually attracted to children, but who are believed to do little or no harm to them. In clinical research, the term has been used to refer to a number of different types of sexual acts occurring between adults and children. Under the rubric of pedophilic behaviour, sexual acts have been listed ranging from touching and fondling to assaulting and injuring victims. Depending upon the respective sexes of the offender and the child, a distinction is commonly made between homosexual and heterosexual pedophilia.

Because the concept of pedophilia has been used to encompass a wide range of sexual acts which are often not clearly specified, the term is not used in this Report. It is also unclear in what respects pedophiles are said to love children more than other persons do, particularly when this behaviour involves committing unwanted sexual acts against young victims.

The view that exhibitionists do not touch, or if they do, they do not harm children, has been widely stated. On the basis of this assumption, it has been asserted that such persons may require psychiatric assessment and that their preventive detention is not warranted. As these views enjoy wide credence, a number of statements adopting this position are considered.

In a comprehensive review of the assessment and treatment of child molesters, V.L. Quinsey has noted that:

“Exhibitionists have been found, in general, not to pose a danger to children, although no extensive study of men who expose themselves exclusively to children has been reported.”<sup>1</sup>

In a report on sexual assaults that was written as an information handbook for Canadians, the view was expressed that pedophiles and persons who committed incest with children, because of their affection for them, were unlikely to injure their victims physically and that their victims often reciprocated this affection towards them.

“Sexual acts which are not considered acceptable in our society, such as incest (intercourse between persons who are closely related) and pedophilia (sexual touching and fondling of prepubertal children by mature adults) usually do not contain the element of hostility. Frequently, the persons involved feel real affection towards each other and the person whose sexual rights are misused may not perceive him or herself as abused or hurt in any significant way.”<sup>2</sup>

In the 1953 report on the *Sexual Behaviour in the Human Female*, the Institute for Sex Research obtained information from 4,441 females. The study gave findings on unwanted sexual acts, including acts of exposure. The report concluded:

“It is difficult, in any given instance, to know the intent of an exhibiting male, but our histories from males who have been involved in such exhibitions and who, in a number of instances, had been prosecuted and given penal sentences for such exhibitions, include many males who would never have

attempted any physical contact with a child. The data, therefore, do not warrant the assumption that any high percentage of these males would have proceeded to specifically sexual contacts. It is even more certain that it would have been an exceedingly small proportion of exhibitionists who would have done any physical damage to the child. In all of the penal record, there are exceedingly few cases of reports of rapists who start out as exhibitionists.”<sup>3</sup>

The 1956-59 Toronto Forensic Clinic Study, in which the experience of 54 exhibitionists was reviewed, concluded that while acts of exposure were frequently committed, none of the victims was physically harmed, although some might experience certain psychological after-effects.

“Exhibitionism is important because of the frequency of its occurrence, but is of minor concern in regard to the nature of the act. The consequences, although shocking to many victims, are in general not dangerous to them. This is well recognized by the law . . .”<sup>4</sup>

“The effects on the victim will depend on her own psychological health, her attitude towards sexual matters, her knowledge of the deviation, and especially her realization that no further contact is desired and that there is no impending danger of rape. The fear of an attack is likely to produce a stronger effect than the act itself. Since exhibitionism is not an uncommon deviation and since many women are likely to encounter an exhibitionist sometime in their lives, a general knowledge of the deviation should reduce the possible negative effect of fright.”<sup>5</sup>

In a 1964 study of 756 sex offenders on probation in seven provinces across Canada, 153 cases involved persons charged with having committed indecent acts. Of these cases, 139 of the offenders had been put on probation, seven had received other dispositions (fines, suspended sentences, remanded for treatment) and seven were in jail. Based on findings about persons for whom there was limited information about the nature of the indecent acts they had actually committed, the 1964 study of sex offenders concluded:

“Psychiatric services were most frequently used in relation to the Exhibitionistic Offences, 106 cases of a total of 139, or 76.3% . . . it is surprising to find that the highest use of psychiatric services is made in Exhibitionistic Offence cases in which the degree of personal harm to the victim is quite possibly the least.”<sup>6</sup>

“Considering the nature of the offence, where in almost all cases there is some distance between the accused and the victim, where the victim is offended, insulted, frightened or surprised but the actual physical contact is almost always absent and the degree of personal harm relatively less than most other sexual offences, it is difficult to see the merit in stress being placed on psychiatric services for this type of offender. That this emphasis is prevalent in most of the provinces suggests a prevailing judicial attitude as to the need of psychiatric services in cases of this kind.”<sup>7</sup>

In its 1978 report on *Sexual Offences*, the *Law Reform Commission of Canada* concluded that the application of the offence of indecent act incorporated the phenomenon of exhibitionism was a type of deviant sexual behaviour more properly dealt with by psychiatric treatment than by criminal justice.

“The general formulation of section 169, which prohibits the commission of indecent acts, is applied in practice to the phenomenon of exhibitionism.



Properly speaking, compulsive behaviour of this kind falls within the province of psychiatry. Nonetheless, the text of the present *Code* imposes criminal sanctions because it is perpetrated in a public place or with intent to insult or offend. Admittedly in the circumstances treatment of the offender would seem to call for psychology or psychiatry rather than criminal justice. All the same, the public unquestionably has a right to be protected against acts outraging its sense of public decency.”<sup>8</sup>

The conclusion that persons exposing themselves to children are not dangerous may be valid, but findings are not given in these reports that provide reasonable documentation to support these statements. Furthermore, none of the main studies on exhibitionism focussed directly or in detail on the experience of children.

The conclusion that exhibitionists are harmless rests in part on the conceptual tautology created by the definitions used, and in part, on the sources of information drawn upon in the research studies. As has been noted, the clinical definition of exhibitionism precludes acts of touching, and hence, incidents involving contact are excluded from consideration. As well, much of the research on exhibitionists has been derived either from records of police charges or persons who have been referred for psychiatric assessment. Such information has not been based on a direct review of the actual types of sexual acts committed. To the extent that this has been the case, incidents in which an investigation was made but where charges were not laid, and incidents in which charges were laid with respect to behaviours other than exposures, would have been excluded from consideration.

## Assessment of Risk

The findings of a limited number of research reports suggest that a small proportion of exhibitionists respectively either touch or harm victims. All of these studies are based on the records of persons who have been charged, convicted or psychiatrically assessed. In some instances, the results listed do not accord with the principal conclusions given elsewhere in the reports, namely, that these offenders pose no danger to their victims.

- *1956-59 Toronto Forensic Clinic Study*. In this study of 54 exhibitionists, 20 per cent committed another sexual offence within three years. “Exhibitionists exposing to children are more likely to become repeaters than those who expose to adults . . .”<sup>9</sup>
- *1957 British Study of Sexual Offences*. “There was, however, a small group of offenders who exposed themselves to females, usually children, as a preliminary to some form of indecency . . . a small proportion of offenders who were caught *in flagrante delicto*, but might well have gone on to commit a more serious offence if they had not been intercepted.”<sup>10</sup>
- *1965 U.S. Study of Sex Offenders*. Of all convicted sex offenders, exhibitionists had the highest proportion of previous convictions for sexual offences. “No other group approaches them in the *per capita* number of



sex-offence convictions.”<sup>11</sup> “Almost a fifth involved the use of force on unwilling females.”<sup>12</sup>

- *1973 British Study of Exhibitionists*. Eight of 30 males who exposed themselves to females had a history of sexual contact with children; three of these offenders had molested prepubertal children.<sup>13</sup>
- *1975 Clarke Institute of Psychiatry Study*. In a review of 37 heterosexual pedophiles treated at the Institute between 1967-74, 17 per cent either had committed acts of exposure or were classified as being subject to these impulses.<sup>14</sup>

Of 23 cases of rapists who were seen at the Institute during this period, “25% admitted to indecent telephone calls, exhibitionism or some form of homosexuality.”<sup>15</sup>

- *1979 British Midland Centre for Forensic Psychiatry Study*. Of 100 cases of indecent exposure, 45 per cent had a previous record of sexual offences, including indecent assault and more serious sexual offences. “It has often been said that expositors rarely progress to more serious offences (Cambridge Study, 1957; Mohr, Turner and Jerry, 1964), but this study, which indicated that 7 per cent progressed to more serious offences, demonstrates that there are exceptions to this rule.”<sup>16</sup>

Although each of these reports dealt with a small number of cases, the proportion of incidents involving both exposure and assaults ranged between about a fifth and a quarter of all persons identified as exhibitionists. The findings suggest that there may be a progression from less serious to more serious sexual offences committed by persons who previously were known to have exposed themselves. The findings of these studies, however, are fragmentary and incomplete with respect to their documentation of the experience of children who were victims of both exposures and sexual assaults.

## Case Studies

Of the national surveys undertaken by the Committee, more complete information on acts of exposure to children was obtained in the National Population Survey and the National Police Force Survey. As noted in Chapter 6, many victims of acts of exposure do not report these incidents. When they do, the police are the public service most often turned to for assistance. For both national surveys, all research protocols were individually reviewed with respect to incidents involving both exposures and assaults.

### National Population Survey

**Of the persons in the National Population Survey who reported that they had been exposed to when they were age 15 or younger, 4.3 per cent of the males and 7.8 per cent of the females said that they had been exposed to and sexually assaulted.** Their written accounts indicate the nature of these acts and the reasons why so few of them reported the incidents.

- *19 year-old sales clerk.* When she was 12, a 14 year-old first cousin exposed himself to her. He also threatened to have intercourse with her and touched her breasts several times. Six months later, she told her mother "I felt that because it was a family member, I shouldn't say anything. It should be made clear to everyone that family member or not, it should be reported to someone."
- *43 year-old mother of three children.* Between when she was 11 and 12 years-old, she was initially exposed to. She was subsequently threatened with having intercourse and then raped by "a man who worked on our family farm." She told no one about this. This woman recommended: "Better sex education at school and by parents; and better supervision by adults of children's activities."
- *20 year-old college student.* When she was 15, a 16 year-old boyfriend exposed himself. On another occasion, he threatened to have intercourse with her. Subsequently, he attempted to rape her. "He tried to force to make love with me. He made fun of me because I'd be old and a virgin." She told her sister about what happened. "I could have been helped better if I would have been more informed about sex, its outcome (physically and emotionally). Perhaps if they taught it in school about Grade 7."
- *23 year-old hustler.* When he was 10, a 26 year-old stranger exposed to him several times. The stranger fondled his penis, fellated him and attempted to have anal intercourse. No one was told. "Having to suck a man really changed my life. Maybe, I would be straight now."
- *36 year-old mother of two children.* When she was 14, her 17 year-old brother "exposed himself to me." He then tried to fondle her crotch and breasts. "I was alone with him in the house and scared." No one else in the family was told. "Open discussions with my parents would have helped, however, then it was so hush-hush a topic."
- *32 year-old police officer.* Of an incident in which she had been exposed to at age 12 by a 23 year-old cowboy, she wrote that he then "tried ripping off my clothes." She did not report the incident. "My mother did not want the publicity. As long as there are public instead of *in camera* trials for rape, nothing can really help. The woman is on trial as much as the rapist."
- *23 year-old librarian.* When she was five, she was exposed to several times, had her crotch fondled, and then was subsequently raped by her uncle. None of the incidents was reported. She wrote: "Better communication between parents and children would have prevented such occurrences."
- *57 year-old salesman.* When he was 15, a 23 year-old family friend exposed himself. The adult then fondled the boy's penis and tried to masturbate him. "We slept together at a cottage one summer and he tried to masturbate me. He did not complete the act after my refusal." The incident was not reported. "I was surprised at his action and told him so in private."
- *56 year-old woman.* When she was 12, she was exposed to by someone whom she knew by sight. The male also fondled her breasts and buttocks. "People came to my aid in the school grounds where it occurred." The incident was reported to the police and family doctor, but "I was too afraid to press charges."

- *40 year-old mother of three children.* She was exposed to by her step-father when she was 10. He then fondled her crotch and threatened to have intercourse with her. She told her mother, but no one else. "As a child, I was afraid of breaking up an already unstable home. My concern was for my mother. I felt I would have liked to speak to a teacher, but I was unable."
- *25 year-old man.* He was exposed to when he was 12. He was later masturbated by the same 18 year-old male. He wrote: "Wasn't important; part of growing up. My incident was just part of growth."
- *27 year-old mother of four children.* When she was eight, she was exposed to by a neighbour. He then attempted to rape her. "An older man, 25-30 years-old, tried to put his penis in my vagina. He asked me to go for a walk with him. I ran when I realized what he wanted to do." She told no one about the incident. "I was too young to realize what he wanted. I should have been taught something about sex in school so I would know enough not to have gone with this person."
- *29 year-old waitress.* When she was between six and 10 years-old, she was repeatedly exposed to, threatened and touched on her breasts by her father. He also tried to rape her. "My father tried with me. I was marked for a long time about this — it will follow me emotionally through my life." The child finally told a social worker who spoke to her father and the acts were stopped.
- *68 year-old retired high school principal.* When she was 10, she was exposed to several times and had her crotch fondled by a labourer who worked for her parents. "I was too young and too afraid to do anything about it."

The average age of these persons when the incidents had happened to them as children was 10.9 years. Their age range was between five and 15 years. In only two cases were the acts committed by strangers. In about a third, a family member was involved; the remainder of the exposures followed by an assault were committed by acquaintances. In two-thirds of these personal accounts, the child told no one. Many of them felt they did not know enough about sex to realize the significance of the acts, some were afraid and others were too ashamed to tell.

In about a fifth of these incidents a family member was told, but no further action was taken. In only two cases were members of the helping services contacted, and in neither instance were charges laid. In contrast with the findings on acts of exposure in which a majority of the suspected offenders were strangers, incidents in which exposure was followed by an assault were mostly committed by persons known to the child. This close association between victims and exposer-assailants partially explains why so few incidents of this kind are reported to the authorities. It may also account for the conclusions reached by some observers that such incidents do not occur. The victims of these offences are in a position of double jeopardy. On the one hand, they are too young to know how to protect themselves or are afraid to seek help, and on the other hand, most of the persons who exposed themselves and then tried to assault the children were persons whom they knew.



The assaults committed following an act of exposure were, with few exceptions, serious offences. In only about a fifth of these incidents did an offender only touch or fondle a child. In incidents in which boys were involved, they were masturbated or anal penetration by a penis was attempted. Girls who were victims were most frequently threatened with rape, one girl was raped, and another had her clothes torn from her body.

In none of the incidents described in the personal accounts did a child realize that an exposure was likely to be followed by a sexual assault. At face value, only a small number of children appear to be at risk of offences involving exposure followed by an assault. In the National Population Survey, one in 23 males and one in 13 females reported that they had been victims of these offences when they had been children. However, since the National Population Survey was a random and representative sample of the Canadian population, if these rates are prorated to the total population, then it may be the case that a sizeable number of Canadian children are victims of offences of this kind.

## National Police Force Survey

In the National Police Force Survey, a total of 1,624 incidents of exposure to children who were age 15 years or younger was reported and there were 63 cases in which exposure was followed by an assault. The proportion of the latter to the former was 3.8 per cent. Since the number of cases of this kind reported to all police forces across Canada is unknown, no estimate can be made of how many such cases routinely come to the attention of the police. Based on the findings of the National Population Survey, in which only 7.1 per cent of cases of this kind were reported to the police, it could be expected that since the National Police Force Survey included a review of the records of many of the largest cities in Canada, only, at most, between 200 and 300 such cases would be investigated annually across the country.

The police general occurrence records were reviewed individually in order to provide additional documentation of incidents in which exposures were followed by an assault. A total of 485 such incidents were found, but in a majority of these cases there was insufficient information to determine either the sequence of the sexual acts committed or to assess whether an exposure had preceded an assault and was not an integral part of the assault. All such cases were set aside and, for this reason, the number of incidents which were investigated by the police in which two separate acts were committed is likely to be an underestimate of the actual number which actually came to their attention.

The case studies based on reports of investigations by the police show that a higher proportion of incidents of this kind was committed by strangers than the proportion reported in the National Population Survey. This finding suggests that when such offences are committed by strangers, they are more likely to be reported to the police. The case studies from the police records also show that relatively few of these offences were reported to have been committed by family members or acquaintances of the child.

- *12 year-old boy* was exposed to by a 22 year-old male neighbour who also masturbated himself. He then fondled the boy's penis and showed him pornography. Cautioned by police and referred for psychiatric assessment.
- *Two sisters, ages five and eight* were exposed to by a 56 year-old male boarder. He subsequently fondled their crotches. Charge of indecent assault female was laid.
- *14 year-old girl* was walking along railway tracks when a 21 year-old male exposed himself to her and then fondled her breasts and buttocks. Charged with committing an indecent act and an indecent assault female.
- *Six year-old boy* on his way to school said "hello" to a middle-aged male who was in an alley. The man took the boy to a garage, exposed himself, and then asked the boy to fondle his penis. The boy was given a dime. Identity of the suspect unknown.
- *Two brothers, ages eight and nine*, while visiting a hospital were exposed to by a 33 year-old male who was sitting in a wheel chair. One of the boys was persuaded to masturbate the patient. No charges were laid.
- *Eight year-old girl*, while playing in a government subsidized playground, was approached by a male with his penis exposed. The man asked the girl to play with him and forced her to fondle his penis. Identity of suspect unknown.
- *Seven year-old girl* was exposed to in a school yard by a young man. He offered her a dollar for a kiss. He kissed her and fled. Identity of suspect unknown.
- *12 year-old girl* was playing in a park. She was helped onto a slide by a 25 year-old man who exposed his penis and then caressed her buttocks. Charge of indecent act was laid.
- *Two 15 year-old girls* walking on a street were followed by a man who exposed his penis and then tried to proposition them. He grabbed one of the girl's breasts. They resisted using a stick. Charges of indecent act and indecent assault female were laid.
- *10 year-old girl* was playing with friends when a 55 year-old male neighbour called them over to his garage. He was exposing himself. He pulled the girl to him and fondled her breasts, buttocks and genital area. Suspect was cautioned. Charges not laid due to child's age and lack of evidence.
- *15 year-old girl* knew by sight a 56 year-old man from walking her dog in the neighbourhood. The previous summer, he had repeatedly exposed himself and threatened her unless she fellated him. During the incident, after exposing himself, he threatened and fondled her. Charges were laid of indecent act and indecent assault female.
- *Three year-old girl*, while having her diapers changed by her mother said that she had seen a man's "dicky bird" when she had been in the stairwell of the apartment building. The man later took the girl to his apartment, where he had the child touch his penis. Suspect unknown.
- *Three children, two girls and a boy between four and eight years-old* were playing at the side of a road when a man drove up in a car, exposed himself and offered each of the children a dollar to touch him. They did. Identity of suspect unknown.

- *Eight year-old girl* was exposed to in her home by a 33 year-old man who was a friend of her father. He subsequently had thigh intercourse with her. Charges of indecent act, indecent assault female and gross indecency were laid.
- *Eight year-old girl* was approached in church by a young man. He offered her \$2 to go outside with him. He exposed himself to her and then had her touch his penis. Identity of suspect unknown.
- *Five year-old girl and a friend* on their way home from school were taken by an adolescent boy to a garage. The boy exposed himself. He pressed his body to one of the girls, simulated intercourse with her and lay on top of the other girl, while fondling her genitals. Suspect unknown. Credibility of the victims questioned in police general occurrence report.
- *Eight year-old girl and a friend* were called over to a car in which a man exposed himself, grabbed one of the children by the shirt and masturbated himself with his other hand. Identity of suspect unknown.
- *10 year-old girl* was approached by a male jogger who was exposing his penis. He asked her to touch it. She did and he ejaculated. Identity of suspect unknown.
- *12 year-old boy*, while walking along railway tracks, was approached by a man and offered \$10 to show his penis. He refused. The man then undressed and forced the boy onto his hands and knees. Identity of suspect unknown.
- *Six year-old boy*, while in a playground, was approached by three youths, one of whom had his penis exposed. The boy was forced to take the penis of one of the youths in his mouth. Identity of suspects unknown.
- *Four year-old girl* was taken several times by a 57 year-old neighbour into a garage where he exposed himself, had her touch his penis and fondled her crotch. Age of child, lack of evidence and lack of corroboration were cited as reasons why charges were not laid.

The suspect was unknown in slightly less than half (47.6 per cent) of the incidents of exposure followed by an assault of a child investigated by the police. Charges were laid in 45.5 per cent of cases where suspects were known. In about two in five of the cases where the police knew the identity of the suspected offender, charges were not laid due to the mental or physical condition of the male offenders. In the remainder, charges not laid were due to lack of evidence, to the child's age and to the child being disbelieved. In virtually all cases of this kind (95.2 per cent), the charges were listed as "founded" by the police, an indication that the police believed the great majority of the accounts related to them by the children who were victims of acts of exposure followed by an assault.

## Summary

**The Committee's findings on acts of exposure followed by a sexual assault do not support the view held in some quarters that all persons who expose**



themselves to children are harmless and should be considered more of a nuisance than a threat to victims. The findings in Chapter 8, *Acts of Exposure*, indicate that a large number of these persons only expose themselves and do not touch or assault children. However, the Committee's research findings also show that in a small proportion of instances, acts of exposure are followed by a sexual assault against a child or youth, and that if this ratio is prorated to the Canadian population, then a sizeable number of Canadian children are likely to be at risk of being victims of these types of offences.

In the absence of more complete findings and evidence to the contrary, the conclusion cannot be accepted that persons who commit such acts are harmless and do not commit more serious crimes against victims. In this regard, the Committee does not accept the conclusion of the major previous Canadian study on exhibitionism, namely, that:

"Since exhibitionism is not a progressively dangerous sexual offence, legislation involving preventive detention cannot be justified . . . Because sexual offences evoke an emotional reaction, not only in the general public, but also those dealing with the offender, it is especially important that judicial and correctional procedures be based on what the problem is, and not on what it is feared to be."<sup>17</sup>

The Committee considers that there is insufficient evidence to conclude that "exhibitionism is not a progressively dangerous sexual offence" or that "legislation involving preventive detention cannot be justified". Nor can it be assumed, as the *Law Reform Commission of Canada* has concluded, that "properly speaking, compulsive behaviour of this kind falls within the province of psychiatry".<sup>18</sup>

On this issue, the 1956-59 Toronto Forensic Clinic Study stated that:

"The deviation is not a symptom of mental illness or mental defectiveness, nor is it necessarily indicative of general immoral behaviour."<sup>19</sup>

"Hospitalization is seldom required since neither the mental state nor the element of danger justifies certification. Serious mental disorder or mental retardation are found in only about five per cent of the cases. Most of the additional psychiatric diagnoses that are associated with exhibitionism fall into the category of character disorder, such as immature or inadequate personality."<sup>20</sup>

"After some 12 years of assessing and treating exhibitionists in a clinical outpatient setting, our experience shows that the kind of assistance required by a large majority of exhibitionists may be quite adequately provided by probation officers. Psychiatric services may be more appropriately and widely used for consultation in difficult cases rather than carrying the load for all cases. There are not proven cures for exhibitionism and, as yet, no evidence that intensive psychiatric care yields appreciably better results than case management procedures which are within the capabilities of trained probation officers."<sup>21</sup>

If, as the findings of the Committee and a number of other studies indicate, some persons who expose themselves to children are also likely to assault them, and if, based on psychiatric assessment, it appears that most of these

offenders are not mentally ill, then the Committee believes that legal sanctions must be retained with respect to persons who commit these acts. The Committee believes that there is a need to establish a means for the continuing surveillance by enforcement and correctional authorities of persons who commit these acts against children, and that a comprehensive assessment is warranted of the efficacy of the management of offenders put on probation, fined, given suspended sentences, remanded for treatment, or jailed. No such comprehensive and detailed evaluation is now available.

**In order to assemble more complete information on acts of exposure and acts of exposure followed by a sexual assault, the Committee recommends that the Office of the Commissioner in co-operation with the Canadian Association of Chiefs of Police mount a national prospective fact-finding study in which:**

- 1. Persons reported to have exposed themselves to children and youths would be identified.**
- 2. A monitoring of any subsequently reported offences would be established.**
- 3. An evaluation be undertaken of the outcomes and effectiveness of different management procedures and sentencing practices in relation to reducing recidivism.**
- 4. The classification of these acts in Uniform Crime Report Statistics be revised in order to permit the accurate identification of these acts on an ongoing basis.**

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## Chapter 10

# Children Who Were Killed

The Homicide Statistics Program established by the Justice Statistics Division of Statistics Canada in 1961 assembles information on all cases of murder, manslaughter and infanticide that are reported by the police, the courts and correctional services across Canada. This national register is unique among the various sources of criminal official statistics because of the breadth of the information that it assembles, its continuity spanning a period of over two decades, and the fact that, unlike other sources, it provides information about the victims of the homicides as well as on the persons who are suspected, charged or convicted of these deaths. Collated by means of a standard reporting protocol, the findings of the national register of homicides reflect changes in reporting procedures, the introduction of new legislation bearing on these crimes, and since 1974, the separation of homicides into different categories listing separately murder, manslaughter and infanticide. The index does not draw upon the findings listed in death certificates; a different system of classification is followed in the reporting of mortality statistics for the nation.

During the initial review of police records that was undertaken in relation to the National Police Force Survey, it was found that homicide cases were kept separately and that no distinction was made in these sources between homicides that were caused by sexual abuse and by other means. In smaller police forces whose recording systems function on a manual basis, obtaining information on homicides involving children entails the drawing and checking of all homicide occurrence reports. Depending on the size of the police force and whether a separate unit handled homicides, the nature of all types of sexual assaults cannot be readily documented without reviewing the cases with the police who undertook these investigations. It is for these reasons that information was not collected on sexually motivated child homicides during the course of the National Police Force Survey and that, in this regard, the national homicide register was drawn upon as the principal source of information.

At the request of the Committee, the Justice Statistics Division of Statistics Canada provided a special tabulation of all homicides of children between 1961-81 that were listed as being sexually motivated or that had involved sexual assaults. Sexual assault murders were defined as: "murders which were

preceded or accompanied by rape or indecent assault, or were sexually motivated.” Sex-motivated murders include deaths in which the “suspects did not sexually attack the victim, but had previously made sexual advances (degree or intensity of advances are unknown) and after they were rejected, murdered the victim”.<sup>1</sup> Lovers’ quarrels or love triangles are listed separately from sexual assaults and sexually motivated murders; they involve cases having “personal relationships. . . (such as). . . fiance/fiancee, boyfriend/girlfriend, mistress/lover and homosexual relationship.”<sup>2</sup>

## Incidence of Child Homicides

There are no historical baseline studies that can be drawn upon as a benchmark to answer the question: “Are more children and youths sexually assaulted now than in the past?” There have been no direct studies of Canadians in which these questions have been asked that can serve as a basis for such a comparison. Official criminal statistics do not report information about the victims of criminal offences.

The national register of homicides for the period between 1961 to the present is the only source of criminal statistics known to the Committee that assembles information for Canada on a uniform basis about the victims of sexual offences. Among the interpretations of the reporting of criminal statistics, the three most prominent approaches have been: a positivistic analysis; a critical perspective; and an institutional supply model. Among these, there is agreement only on the recognition that official statistics do not reflect accurately the true extent to which offences are committed.

The *positivistic* approach, while acknowledging deficiencies in official statistics, assumes that “nonetheless, they represent an indicator of the crime rate” and thus that they may be drawn upon “to analyze the crime that is known to the justice system.”<sup>3</sup>

Contrasting with this approach are the assumptions of a *critical perspective* that contends that apparent increases in reported crimes are a statistical mirage whose proportions are swollen by the inclusion of a sizeable number of minor offences. One historical review of crime rates for Canada for the period 1950-66 that was subsequently updated to 1977 concluded that “neither total indictable victims nor charges were found to have increased” and that there were “real decreases in a number of important offence categories.”<sup>4</sup>

The critical perspective challenges the validity of official crime statistics on the grounds that these rates are often inflated in order to justify the need for more enforcement services and the meting out of harsher sentences. It is alleged, for instance, that the police are “notorious for exaggerating increases” in the reporting of crime, that Statistics Canada “never understates a gloomy crime statistic” and that “Canadian crime legislation very much reflects the



particular interests of the holders of economic and political power.”<sup>5</sup> By fostering a sense of public alarm, public enforcement services are said to justify their existence and the need for increased public support as well as showing that “recourse to repressive measures can be better defended.”<sup>6</sup>

The *institutional supply model* of interpretation of changes occurring in crime rates assumes that these are indicators of the dominant characteristics of any nation and its different regions. From this perspective, the reporting of crime is contingent upon a country’s wealth, the level of education of its people, the adequacy of its public services, and the size of its police forces and the population of its large towns or cities. Where these occur in conjunction, and as they rise, there will be higher rates of reported crimes. An interpretation based on this perspective would conclude that reported crime rates are higher in those regions of Canada where the inhabitants are better educated, have higher incomes, more live in urban areas and where public services are more efficient and police-to-population ratios are lower.<sup>7</sup>

What is absent in the discussion of the interpretation of crime rates for Canada, and whether or not they have been rising, is a firm body of information upon which to test these conjectures. It may be the case that the salient points of each perspective are not contradictory, but are complementary in explaining the occurrence of crime.

Regardless of how the trends involving sexual assault homicides having children as their victims are interpreted, there is no doubt that the reported incidence of these killings has risen in both real and proportional terms between 1961 and 1980. During this period, there was an average of 7.8 such deaths each year of children and youths who were 20 years-old or younger. In the following listing, these deaths are grouped into five year periods. The average number of deaths annually for each period is listed as well as the rate of the deaths per one million children under 16 years of age. The number of the children under age 16 in Canada decreased from 6,909,900 in 1965 to 6,001,000 in 1980.

Years	Total of Child Sexual Assault Homicides <sup>1</sup>	Annual Average Number	Rate per One Million Children Under Age 16
1961-65	20	4.0	2.9
1966-70	30	6.0	4.6
1971-75	62	12.4	9.6
1976-80	43	8.6	7.2

<sup>1</sup> Year of one child homicide was not listed in the statistical tabulation provided to the Committee.

During this period of two decades, there was a doubling in the occurrence of these deaths when they are considered by themselves and are not adjusted for the changing age composition of the Canadian population. During the peak five year period between 1971-75, this number rose to 13 deaths for each of 1971 and 1974 and 22 deaths during 1973. In terms of their incidence based on

rates per one million children, there was an increase in the reported sexual assault child homicides from 2.9 to 7.2 per million children between 1961-80, or an overall increase of 148 per cent. The rate of these deaths peaked at 9.6 per one million children between 1971-75.

## Age and Sex of Children

For the period 1961-80, 156 sexual assaults and sexually motivated homicides involving children and youths (under age 21) were reported to the national register. The sequence of attrition occurring between when the crimes were reported to the police and their disposition by the courts parallels the trends in these respects for all types of crime. In about half of the cases (52.3 per cent), the offenders of the sexual assault child homicides were imprisoned for these offences. The identity of the assailant was unknown in about a quarter (23.1 per cent) of the deaths. Of the homicide suspects whose identity was known, several subsequently committed suicide, a number were insane, and in about a seventh of the deaths, the suspects were acquitted at court hearings of the charges laid against them.

A majority (84.0 per cent) of the young victims were females. Two of the killings were of infants under two years-old. During this period of two decades, sexually motivated killings of children involved: 11 who were between 2-6 years, 29 who were between 7-11 years, 21 who were between 12-13 years, and 25 who were between 14-15 years.

Depending upon their ages, the risks of being the victims of these crimes were different for boys and girls. Among the 22 boys who were killed in which sexual assaults had occurred, half were between 7-11 years with the remainder being evenly distributed between the younger and the older age categories. In contrast, the number of these types of killings rose with age among the 67 girls who were under age 16. One female child was under the age of two years, 10 were between 2-6 years, 18 between 7-11 years; 17 between 12-13 years and 21 were 14-15 years.

The most frequent ways that the children were killed were: strangling (34.6 per cent); beating (20.5 per cent); and suffocating (9.0 per cent). Alcohol and/or drugs had been used by assailants before or during one in four of these deaths (23.1 per cent). Weapons were used in about a third (29.2 per cent) of the deaths with stabbing by knives occurring twice as often as deaths caused by firearms (19.6 per cent versus 9.6 per cent).

**When the experience of children and youths is considered separately from the homicides involving adult victims, it is apparent that they are not only the victims of serious and violent crimes, but they also constitute a high risk group among sexual assault homicides.**

The special tabulation of sexually related child homicides prepared for the Committee shows that when these types of crimes are committed, children and

youths are an especially vulnerable group. For the 14 years between 1961-1974, children under the age of 16 years constituted about a ninth (11.7 per cent) of the 4,658 homicides reported by the police that were listed in the national register of homicides. Of this total, **there were 104 sexual assault homicides. Children under the age of 16 were the victims of two in five (43.3 per cent) of these deaths.** In contrast, children under 16 years were the victims of only 10.9 per cent of all other types of homicides.

Type of Homicide	All Homicides 1961-74	Children under 16 Years	
		Number	Per Cent
Sexual assault homicides	104	45	43.3
All other homicides	4,554	498	10.9
Total	4,658	543	11.7

In a number of studies on crime rates for Canada, the very young and the elderly have been omitted in the calculation of these statistics. This omission was based on the peculiar assumption that since persons in these groups seldom commit crimes of violence against the person, they should be excluded in the calculation of rates relating to the victims of these crimes. In one analysis, for instance, it was noted that certain crime statistics are based on a population denominator of persons who are seven years or older since this is “the minimum age of mitigated responsibility for minors.”<sup>8</sup> In an international comparative review of crime rates which included the Canadian experience, “all figures were deflated by the population aged 10-40, the population most at risk for criminal behaviour and sanctioning.”<sup>9</sup>

The exclusion of certain age groups in the population in studies deriving estimates of the prevalence of crime serves, by definition, to inflate the numerator or the apparent number of offences that are reported by comparing them with a smaller number of persons who may be at risk as the victims of these offences. This approach also masks the extent to which certain age groups such as children may be at greater risk for certain crimes relative to their numbers in the population.

## Minority Groups

Most of these young victims were Caucasian (84.6 per cent) and about a ninth (11.3 per cent) were Indian and Inuit children. In the report by Statistics Canada, *Homicide in Canada: A Statistical Synopsis*, (1976), it was concluded that:



"The Native Peoples are homicide victims far out of proportion to their relative population size. While Native Peoples constituted 1.2% of the population in 1961 and 1.5% in 1971, 16% of Canada's homicide victims since 1961 have been Indian, Metis or Eskimo. Homicides among the Native Peoples are committed disproportionately and mainly in the context of domestic relationships."<sup>10</sup>

A similar trend exists for child homicides involving sexually related offences. If 1971 is taken as a midpoint in the listing of the homicides for 1961-1980, then the proportion of Indian and Inuit children under age 16, which was higher than for other Canadians, was 2.14 per cent of all Canadian children. If the general ratio is applied on the basis of the 151 child homicides whose racial origin was known during this period, three of the homicides would be expected to have been against Indian or Inuit children. In contrast, the homicide register listed 17 deaths, or 11.3 per cent of the total, as being Indian and/or Inuit children who were killed in sexual assault homicides.

While the number of children involved is small, this finding, if it is considered by itself, appears to indicate that Indian and Inuit children are a highly vulnerable group having over four times the number of the deaths that would be expected in terms of their numbers in the general population. A comparable imbalance is found among the persons who were charged with these crimes with Indian and Inuit males constituting 8.9 per cent of the suspects or offenders, or over five times the number that would be expected in terms of their numbers in the general population.

Because of extensive intermarriage between persons from different groups, most Canadians have a mixed cultural background. The identification of an individual's ethnicity in official statistics is based on an arbitrary labelling that has little to do with the values actually held by individuals. There is no uniformity between different classification systems used by official agencies in identifying a person's cultural background.

In the collection of Canadian Census Statistics, persons are asked to which cultural group their male ancestor who originally came to this country belonged. If there is uncertainty on this, then the language spoken by that male ancestor is used as the basis to determine a person's ethnicity. In the information fact sheet used by the National Register of Homicides, the category listed as "racial origin" includes : Caucasian, Negroid, Mongoloid, Canadian, Indian, Eskimo and Inuit. The instructions for completing this item on the form provide no definition of how the police, the courts and the correctional services should proceed in identifying an individual's "racial" background. The decision in completing this item is made without the benefit of having uniform criteria set out for each responsible official to follow. Canadian Census Statistics and Homicide Statistics identify respectively, then, a person's *ethnic* background and *racial* origin, two categorically different social facts.

Considerable caution is warranted in the interpretation of homicide statistics which, at face value, apparently show that Indian and Inuit people commit

homicides "far out of proportion to the relative population rates." This caveat should also be heeded with respect to child homicides involving sexually related offences. The findings may be valid. However, the evidence upon which they are based is seriously flawed. A more consistent and accurate identification of the cultural and/or racial origins of all Canadians is required before conclusions can be reached about the vulnerability as victims, or the likelihood of committing crime, of any particular group in the population.

## The Assailants

In comparison to all Canadian males, the men who were charged with these homicides were disproportionately older teenagers (32.5 per cent) or younger adults (45.8 per cent between 21-30 years). One in seven of the suspects (13.5 per cent) was 17 years-old or younger.

The majority of these assailants were single (66.7 per cent) and most had dropped out of school as soon as they had passed the minimum age educational requirement (81.5 per cent with grade 10 or less schooling). For those whose prior employment was known, many had been unemployed (43.2 per cent) or had worked in unskilled jobs as labourers (30.1 per cent). One in 10 of the suspects (10.3 per cent) was a student when he had committed the homicide.

Between 1961-80, 156 child homicides having sexually related offences were reported to the police across Canada. Two in five (42.9 per cent) of the crimes resulted in the offenders being sentenced by the courts to life imprisonment and an additional one in 10 (10.3 per cent) was given a lesser sentence ranging from under two to over 10 years in prison. Among the rest of the cases were instances in which: suspects were known (30 cases); suspects who were subsequently acquitted (15); and some who had committed suicide (5) or who were judged to be insane (1). Three cases were handled under the *Juvenile Delinquents Act*.

## Type of Association

Nine of the child homicides involving sexually related offences (8.1 per cent of all young victims for whom this information was known) were committed by a person having a kinship or domestic relationship with the children. These suspected offenders included: a brother/half-brother; two uncles; four cousins; a foster brother; and a parent's common-law partner. Because of the method of classification, by definition, the majority of the crimes were committed by persons who did not have close domestic or position of trust relationships with these children. That more of the killings were committed by persons who were well known to the children than is reported in these statistics appears to be indicated by the nature of the locations where these killings occurred. About



a third of the homicides (31.8 per cent) occurred either in the homes of the victims or the suspects, and one in 11 (9.3 per cent) in other private locations. Only a quarter (23.7 per cent) of the child homicides had been committed in public places such as parks, streets or alleyways. The remainder of the deaths occurred in an assortment of other locations.

Two boys and seven girls had been killed in sexually motivated homicides by members of their families, households or relatives. There is no separate category in the national register of homicides that distinguishes homosexually motivated killings. The likelihood that young males may be a highly vulnerable group when these types of crimes are committed is indicated by the fact that for 22 of these 25 deaths, a non-domestic criminal act was reported with all of the suspects or convicted offenders being males.

## Classification of Sexually Motivated Homicides

Each homicide file in the national register lists information on: the selected characteristics of the victims; the circumstances of the incidents; and the legal actions that were taken. While there is a relatively detailed specification about each homicide that, by definition, constituted the most serious offence, there is no listing of the related charges which may have been laid in connection with these deaths. The classification of the incidents occurring in connection with the homicides is given under one of five categories. While this listing provides for continuity in the analysis of homicides since 1961, when this format was adopted, the classification codes developed at that time assumed that certain types of crime either did not occur or happened so rarely that their separate identification was not warranted. As a result, it is not certain that all reported instances of homicides involving sexually related offences are, in fact, identified. There is no sufficiently detailed listing of the relationships between victims and suspects to permit an accurate specification when children and youths were killed as to how many of these acts were committed by persons who were responsible for them, were in positions of trust to them, or may have had an established sexual relationship with them.

The elements of the acts that are committed in relation to reported homicides are classified under one of five categories. Under one of these categories, *Incidents Committed During the Commission of Other Criminal Acts*, the episodes that are listed include: rape, sexual assaults and sexually motivated attacks. Information listed under this category is the exclusive basis for the identification of the number of homicides involving children and adults who may have been sexually assaulted.

In the completing of the homicide records that are included in the national register, the elements comprising these incidents may be classified under a number of headings including: a sexually motivated offence; a sexual assault; revenge; jealousy; anger; or self-defence. Because of the overlapping nature of some of these categories, certain homicides such as those involving incest or



homosexual relations could be equally well listed as resulting from revenge, jealousy or anger.

The listing of the elements of homicides that involve a *Domestic Relationship* includes incidents committed by: members of the immediate family; other relatives; and common-law situations. Beyond this listing, there is no specification of the identity of these “other” persons who may be responsible for the children. This type of information is subsumed under other categories. Included under the category of *Social or Business Relationships*, for instance, are: lovers’ quarrels or love triangles which are designated as personal relationships, such as: fiancé/fiancée; boyfriend/girlfriend; mistress/lover; and homosexual relationships. In addition to these relationships that, by definition, involve close personal contacts, the category of *Social or Business Relationships* also subsumes situations involving persons having positions of trust to children, such as: employers/fellow workers; teacher/student or live-in babysitters.

The inclusion of these types of relationships under the broad classification of *Social or Business Relationships* means that important and essential information is lost, or cannot be retrieved, in the analysis of certain types of sexually motivated homicides involving children. The aggregate listing of all such relationships together precludes the separate specification of persons whom the children may know or who may be responsible for them. This method of classifying the elements of the incidents related to homicides serves to perpetuate the conclusion that most of the deaths are committed by persons who are casual acquaintances or who are unknown to the children. It is unknown if this conclusion is valid. Based on the general findings of the national surveys undertaken by the Committee, it is likely that a significantly higher proportion of these child homicides is committed by persons whom these children knew than is indicated by the findings of the register. In this respect, the classification system that is used in the national register about the association between victims and offenders masks and undoubtedly underreports the actual situation.

## Recidivism

Reported statistical information is incomplete about the convicted dangerous sexual offenders who killed children. While they are few in number and constitute an unrepresentative group, they provide a stern reminder questioning the validity of a number of assumptions about child sex offenders and their management by the helping and enforcement services.

**The national register of homicides does not assemble detailed information on the prior records of the offenders listed in its recording system. In the absence of such information, no conclusions can be derived from this source about whether these violent crimes are isolated single assaults, or whether they constitute the culmination of a number of minor offences that may have been previously undetected, or if reported, may have involved charges being laid on**

**other grounds.** The prevailing assumption in much of the research on sexual offences is that while persons committing minor sexual infractions are an intolerable nuisance, it is often concluded that: they are harmless; they are unlikely, once identified to authorities, to repeat these infractions; and they are better dealt with by being fined, by being reunited with their families or by means other than imprisonment that may prove detrimental to their subsequent rehabilitation.

The validity of these assumptions is challenged by the popular belief that there is a progression from minor to more serious sexual offences and by the findings of a number of in-depth studies of convicted sexual offenders who have had extensive prior experience involving unreported and reported crimes that are listed under other categories.

As noted in Chapter 9, *Exposure Followed by Assault*, and Chapter 40, *Recidivism*, the research that concludes there is no progression from minor offences, such as peeping or voyeurism, the stealing of women's clothes or exhibitionism to more serious crimes of sexual violence, derives either from official records or small numbers of offenders who were studied during a short period of time. The assumption of the former type of study is that the listing of police charges or prior convictions reflects accurately the extent to which these crimes were committed.

The assumption that there is no progression from less serious forms of sexual deviance to acts of sexual violence is challenged by a number of in-depth studies of the prior criminal records of convicted sexual offenders. These studies indicate a substantially higher incidence of unreported crimes and of reported crimes involving sexual offences having charges laid under other statutes such as robbery, break-and-enter or contributing to juvenile delinquency. While initial reports on the sexual behaviour of men and women undertaken by the Institute for Sex Research established by A.C. Kinsey concluded that there was no progression from minor to serious sexual offences being committed, the Institute's subsequent study of convicted sexual offenders challenged these premises. In the latter study, numerous instances of recidivism were found involving prior sexual crimes against adults with even higher rates occurring in incidents in which children were victims. The study concluded that among these convicted sexual offenders that:

"some 56 per cent had juvenile records. . . a precocious criminal development; almost one-fifth committed juvenile sex offences; . . . the aggressors display. . . 3.9 convictions per man; . . . over half of the convictions were for sex offences; . . . offences against property. . . (constituted). . . 18 per cent; . . . 28 per cent of their sex offences involved voluntary heterosexual contact; over one third of the offences were exhibitionism."<sup>11</sup>

In commenting upon the relationship between exhibitionism and peeping, the Gebhard Report noted that: "the stereotype of the timid, harmless peeper need not interfere with our finding that nearly one-fifth of these aggressors'



sex-offence convictions were for peeping: after all, a certain amount of reconnaissance is necessary in selecting the object, time and place for rape. . . a certain amount of exhibition and aggression can be expected to be associated, since some exhibition constitutes a hostile act directed against females."<sup>12</sup>

Two Canadian studies of homicidal sexual offenders have documented the high incidence of previously committed minor sexual offences. Cormier's review of a small number of dangerous sexual offenders found a progression from minor to more serious and sadistic crimes.<sup>13</sup> D.J. West and his colleagues, in an in-depth analysis of 12 serious sexual offenders who were in custody during the mid 1970s at the Regional Psychiatric Centre at Abbotsford, British Columbia, found that prior to the offenders' present convictions, an average of about three previous sexual offences had been committed.<sup>14</sup> Most of the prior offences had been undetected. Where instances of robbery or break-and-enter had been reported to the police, most were acknowledged by the offenders to have been sexually motivated acts, e.g., break-and-enter in order to steal women's clothing.

Among the 12 serious sexual offenders, five had no prior police records, two had been fined and/or cautioned, and five had been previously in prison. In the course of group therapy, the acts that the men admitted they had been involved in included: attempted sexual assaults (six); incest/incestuous behaviour (four); voyeurism or peeping (four); sexually motivated break-and-enter (five); group sex when they had been adolescents or with a teenager (three); homosexual acts (as victims or prostitutes); taking nude pictures (one); and exhibitionism (one.)

Among the 25 sexual offences in which children were involved as partners or victims, 20 (80 per cent) had not been detected by enforcement authorities. Three of the five incidents known to the police resulted in cautions or fines, and in two instances, sentences to a reformatory or prison. Eight of the 25 offences having juvenile victims had involved assaults on unwilling partners. None of these was reported at the time they were committed. Among the 17 offences reported by the prisoners to have been consensual acts (their victims may have thought otherwise), five became known to the police. Of these, most were reported by parents who wished to break up the relationships between their daughters and the offenders. In one instance, the police came upon the participants while an assault was occurring in a car.

Prior to 1975, the Inmate Record System, which was the forerunner of the Offender Information System, assembled a limited amount of information about inmates who were incarcerated in federal penitentiaries. When a prisoner was released on supervision, information about his subsequent activities was not obtained unless he was re-admitted to prison. Prior to 1955, when the Offender Information System was introduced, no information was collected about the major offence category and neither system coded information on the victims of homicides. This type of information was assembled separately by Statistics Canada.



In order for information from these separate sources to be linked, an identification is required listing each inmate's name and number. Following this step, a manual check of the files of inmates who have been discharged is required in order to determine if following their release that further offences may have been committed.

Because of the separation of the main sources of information about persons who have committed homicides and the complexity involved in the identification and retrieval of information about the offences that they may have committed following their release, **no annually updated and centrally maintained source of information is available for Canada about whether the persons who committed sexually related child homicides were involved after their release in committing further sexual offences against children.**

## Homicide Statistics Program

Based on its review of the findings assembled in the national register of homicides, the Committee concludes that the current practices followed in the classification of related incidents and the relationships between victims and suspects may substantially under-report sexual assault child homicides. Published findings in this respect are misleading and inaccurate. There is insufficient specification in the initial reporting protocol defining precisely what related acts are committed, over what period of time, or by whom relative to persons whom the children know or who are responsible for them.

Opinion is divided and the available evidence is fragmentary on the issue of whether or not there is a progression from acts of minor sexual deviance to more serious crimes of sexual violence. The absence of reasonably firm information on this important question is a serious gap in providing adequate protection for adults and children and raises questions about the efficacy of existing enforcement and correctional procedures.

The existing systems of collecting and reporting statistics on homicides pay little attention to the victims of these crimes, whether they are children or adults. The information systems operate in such a way as to preclude obtaining a detailed appraisal of the recidivism of all categories of offenders. This is a glaring omission about an issue that concerns most Canadians. If such information were to be collected on a systematic and annual basis, it would permit an evaluation of the effectiveness of different sentencing practices, the benefits that may be gained from the various types of treatment provided for prisoners who are in custody, and the efficacy of the different types of prison settings (minimum to maximum security) in which prisoners are housed.

The means to obtain this important information about this group of offenders are available. The opportunity to assemble this type of information is hindered by the statistical systems that are now in place. In the Committee's opinion, it is mandatory that the existing information retrieval systems be

revised to identify information on the recidivism of persons who have committed sexually motivated homicides with the results being published annually about the experience of particular types of discharged inmates.

In relation to Recommendation 35 given in Chapter 3, **the Committee recommends that the existing classification of homicides be reviewed by the Office of the Commissioner in conjunction with an interagency body (including officials of Statistics Canada, the Department of Justice, the Department of the Solicitor General, the Department of National Health and Welfare and the Canadian Association of Chiefs of Police) with the purpose of developing:**

1. A full listing of all sexually motivated homicides committed against children;
2. A detailed specification of the relationships between young victims and persons suspected, charged or convicted of these offences;
3. The listing in detail of the prior criminal charges of persons convicted of homicides; and
4. The assembling and the reporting on an annual basis of the recidivism experience of persons convicted of sexually motivated homicides against children and youths.

**The Committee recommends further that in the collection of official criminal statistics and the records of the national register of homicides, these issues be studied comprehensively on a continuing basis to provide for a sufficient longitudinal review and that these results be published annually.**

## Summary

1. Between 1961-80, the reported incidence of sexual assault child homicides rose from 2.9 to 7.2 per million children, or an increase of 148 per cent during this period.
2. Sexually motivated killings of children involved many who were very young including: 11 between 2-6 years, 29 between 7-11 years, 21 between 12-13 years and 25 between 14-15 years.
3. The most frequent ways that these children were killed were: strangling (34.6 per cent); beating (20.5 per cent); and suffocating (9.0 per cent).
4. Alcohol and/or drugs were reported to have been used by the perpetrators in about one in four of these deaths (23.1 per cent).
5. Weapons had been used in about a third of these deaths (29.2 per cent).
6. In relation to the total of all homicides involving children as victims, children age 15 and younger against whom sexual and assault homicides are committed are an especially vulnerable group. Over two in five (43.3 per cent) of all reported sexual assault homicides involve children in this age group.
7. The existing system for the classification of sexual assault homicides provides inadequate information about certain essential elements that are involved in the committing of these crimes.

## References

### Chapter 10: Children Who Were Killed

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- <sup>2</sup> *Ibid.*, p. 194.
- <sup>3</sup> Parizeau, A. and D. Szabo, *The Canadian Criminal Justice System*. Lexington, Mass.: Lexington Books, 1977, p. 49.
- <sup>4</sup> McDonald, L., *The Sociology of Law and Order*, Toronto: Methuen Publications, 1979, pp. 224 and 6.
- <sup>5</sup> *Ibid.*, pp. 5, 6 and 250.
- <sup>6</sup> *Ibid.*, p. 236.
- <sup>7</sup> *Ibid.*, pp. 155, 175.
- <sup>8</sup> Parizeau, A. and D. Szabo, *op. cit.*
- <sup>9</sup> McDonald, L., *op. cit.*, p. 145.
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- <sup>11</sup> Gebhard, P.J., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*, New York: Harper and Row Publishers, 1965, pp. 168-9.
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- <sup>13</sup> Cormier, B.M. and S.P. Simons, The Problem of the Dangerous Sexual Offender, *Canadian Psychiatric Association Journal*, 14, 329-35, 1969.
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## Part III

# The Law



## Chapter 11

# Legal Status of the Child

The legal issues within the mandate of the Committee are complex, and have implications for the content and implementation of laws enacted at all levels of government. Providing an overview of the legal issues considered in this section of the Report, the Canadian legal response to the sexual abuse of children is examined in this chapter in relation to: the traditional policy of the law in treating children as a special class; the principles of law relating to child welfare and to young offenders; and the criminal law of sexual offences against children.

## Children as a Special Class

The law has traditionally treated children as a special class<sup>1</sup> which competed with other social interests for legal protection, for instance, the autonomy of the family and the integrity of the trial process. As the findings given in this Report make clear, the manner in which these ostensibly conflicting aims have been resolved does not always provide optimal protection for children and youths against those who abuse and exploit them sexually.

The special legal status of children<sup>2</sup> in Canada is based primarily on three considerations: the special needs of children who, by reason of their age and immaturity, need the care and guidance of others in order to develop into healthy, responsible adults; the substantial vulnerabilities of children to persons older and in many senses more powerful than they; and the actual or presumed incapacity of children to perform certain legal acts of daily life. These special needs, substantial vulnerabilities and natural incapacities (all of which diminish to some extent as the child grows into adolescence and young adulthood) have as their legal consequence both the removal from the child of legal powers otherwise enjoyed by adults and, conversely, the imposition of special duties and responsibilities towards the child on members of society generally. Although the nature and extent of these duties towards children vary depending on the relationship between the child and the other person, a child's legal status is in one sense absolute since it affects all persons with whom the child deals.



Society has a vital interest in ensuring that its naturally weaker members are protected by legal safeguards against the naturally stronger, and particularly, that the welfare and advantage of its children and youths will be protected and fostered.

The conferring by the State of this special status is intended to promote the welfare and protection of young persons in two complementary ways: the legal incapacities and disabilities which the child possesses are imposed primarily for his or her own protection, while the various legal duties and responsibilities imposed on others towards the child raise the social interests in the nurturance and protection of children to a legal plane and, it is hoped, thereby strengthen them.

The justified concerns of society are manifested in many aspects of the child's life. In the areas of education, employment and medical care, to take only three examples, the statute books are rife with illustrations of how the law treats children as a special class, in recognition of their special needs and vulnerabilities. Similarly, by mandating state intervention and penal sanctions where transgressions are found to occur, the criminal law and the law of child welfare express, in different ways, the importance that society places on protecting children from abuse or exploitation. The policy of the law is not to deny that children from an early age have a developing sense of their own sexuality, but rather to ensure that this normal and healthy sexual development is not interfered with by others.

Several considerations combine to justify beyond question the role of legal intervention in this context:

1. The protection of children against abusive or exploitative interference with their bodily integrity;
2. The entitlement of young persons (backed up by such safeguards as the law can provide) to express their sexuality on an equal and genuinely consensual basis;<sup>3</sup>
3. The deterrence of others from violating the trust implicit in all adult-child relationships, by exploiting a child's emotional and sexual vulnerability, or by involving developmentally immature persons in sexual acts which they do not fully understand and to which they are unable to give an informed consent;<sup>4</sup> and
4. The deterrence of others from involving young persons in sexual acts, for example, anal or vaginal intercourse, that may be physically and emotionally harmful to the young person.

Concerning the issue of access by young persons to pornographic materials, other social interests come into play, and these are related to the law's policy of prohibiting interference with a young person's sexual development. Indiscriminate exposure to children of pornographic depictions may distort in an unhealthy way their perceptions of relations between the sexes and communicate an attitude whose impact, by reason of the child's impressionability, may have an effect out of all proportion to the social utility of allowing

them free expression. Further, the ready accessibility of pornography to young persons may serve to compromise the parental role in educating his or her child in sexual matters. The Committee believes that the most appropriate persons to determine how a child should be introduced to and instructed in matters of human sexuality are the child's parents and educators, not the purveyors of pornography. The ready accessibility of pornography to children is incompatible with this aim, since it has the consequence of allowing children to be exposed to influences to which their parents may well prefer them not to be exposed. The same considerations apply to the sale and distribution of pornography to children.<sup>5</sup>

Our review thus far has concerned how Canadian law, in recognition of the child's special needs, substantial vulnerabilities and natural incapacities, has clothed children with a special status which has legal implications for all persons who deal with the child, although these implications vary depending on the context. Of course, the needs, vulnerabilities and incapacities of children change and, to some extent, diminish as the child matures into adolescence, young adulthood, and eventually attains the age of majority. These developmental changes are reflected in corresponding changes in the young person's legal position. As Graveson has observed:<sup>6</sup>

The picture of status cannot be painted in elemental colours of black and white. The common law of which status forms part demands a rich variety of intermediate shades conditioned by the specific function that each of its rules is designed to fulfill. Over so long a span of early human life subdivisions, each of which may perhaps constitute a status within the greater status of infancy, are inevitable . . . Within the general limits of infancy can be found the most illuminating instances of the relative and functional use of the concept of status.

The law has traditionally recognized that the span of life from birth to adulthood is too extensive to be treated as a single legal unit, and that distinctions concerning both the legal capacities of children and the legal duties and responsibilities towards children need to be made between children of different ages and at different stages of development. For the most part, these legal distinctions have been based on whether the child has attained certain ages below that of majority. The general body of law of any legal system cannot deal with society as individuals, but only with classes of individuals whose membership in a given class can be determined by well-defined distinctions, for example, by a person's attainment or non-attainment of a certain age. The child's legal personality at a given age is intended roughly to correspond to the level of intellectual, maturational and emotional development displayed generally by children of that age, and is of necessity, coloured by each society's contemporary social views of childhood.

An example of social and legal conceptions of childhood in eighteenth-century England is provided in the writings of Sir William Blackstone,<sup>7</sup> a highly influential jurist of that period. According to Blackstone, a boy had the capacity to "swear allegiance" at 12 years-old, to marry at 14, and to be an executor of an estate at 17. A girl might be betrothed at seven years-old, at



nine was entitled to dower, at 12 could marry, at 14 could select her guardian, and at 17 could become executrix of an estate. The various capacities of the child of which Blackstone wrote have their contemporary counterparts in Canadian law at both the federal and the provincial levels. Statutes differ, for example, even as to when a child ceases to be a “child” in various contexts. The sharp variations in the ages selected for certain purposes in different jurisdictions attest to the complexity of the issues in the whole area of children’s law.

Within the general body of the law dealing with young persons, several specific issues emerge which are directly relevant to the issue of child sexual abuse and exploitation. As each of these issues is dealt with in other chapters in Part III of the Report, only an introduction is provided here. One such issue is the age at which a young person ceases to be a “child” for the purposes of child welfare proceedings, and thus, in general, ceases to be eligible for the protective services and ameliorative intervention offered by the child welfare system in each province and territory. Another issue is the so-called “age of criminal responsibility”, which is the age below which a child is, due to his or her natural or presumed incapacity, exempted from criminal responsibility (although the child’s actions may prompt the intervention of the child welfare authorities). A third, related issue is the age at which a young person becomes an adult in the eyes of the criminal law, and henceforth, becomes subject to the procedures and penalties of the ordinary criminal court system.

Perhaps the most difficult legal issue is whether the criminal law strikes an appropriate balance between protecting children from sexual abuse and exploitation, on the one hand, and permitting the sexual expression of young persons as they proceed through adolescence into young adulthood, on the other. Where young children are involved, there can be no doubt in the Committee’s judgment that the proscriptions of the law are amply justified, and attempts by some to champion the sexual rights of children and youths to engage in sex with whomever they please are transparent, dangerous and intellectually dishonest. The Canadian criminal law of sexual offences has traditionally prohibited certain sexual acts when engaged in with a person under certain ages (notably, 14), notwithstanding that the younger person may have in fact consented to the act. Recent criminal law proposals blur these distinctions, and would confer on young persons more sexual autonomy than they have traditionally enjoyed. The implications of these proposals (some of which are now part of Canadian law) are considered later in the Report.

Although the policy of the law in providing children and youths with protection against sexual abuse and exploitation is surely justified, there is a related legal area where, in the Committee’s view, the law’s approach to children is inappropriate: the legal principles which apply to children’s evidence. In prosecutions of sexual offences against children, the testimony of the child victim typically is crucial to proving that the offence was committed. The legal issues concerning children’s evidence are complex and are reviewed elsewhere; it suffices to state here that the law places serious fetters both on the legal effect of the child’s testimony, if received. In the Committee’s judgment,



upholding the integrity of the trial process and the conscientious removal of the legal fetters which prevent children from speaking effectively on their own behalf are not incompatible aims.

The difficult social and legal issues which arise when child sexual abuse occurs within the family also illustrate the nature of the problems of status. Just as the law, for important reasons of public policy, confers on children a protective legal status, so does it confer on the parties to a marriage that of the legal status of husband and wife, in order to make that relation a firmer foundation for society. Until recently, for example, there were some sexual offences for which the wife or husband of a person charged with such an offence was neither competent nor compellable to testify against his or her spouse, regardless of the potential relevance of the spouse's testimony.<sup>8</sup> Moreover, laws at both the federal and the provincial levels continue to prevent a spouse from being compelled to disclose communications made to him or her by the other spouse during their marriage, even where such a disclosure might be crucial in the investigation of an allegation of child sexual abuse. These exceptions have been justified historically as protecting the sanctity of marriage; their current appropriateness is commented upon later.

Reference has been made to the fact that the young person's legal status is in one sense absolute, since it affects (although in varying degrees) everyone with whom the young person deals. The young person also has, however, a separate and additional status in relation to his or her parents. Towards them, he or she has the legal status of their child, and they have the corresponding legal status of parents, with all the rights, duties and responsibilities that this relationship implies. Speaking generally, the duties of parental status are fixed in nature, though unlimited in number and frequently in duration. There is obviously no specific number of occasions on which a parent is required to act parentally in favour of his or her child. In this regard, the law allows parents a good deal of discretion concerning how these responsibilities will be discharged.

On principle, society will intervene only when a child's parent or guardian acts in a manner that is demonstrably adverse to the child's welfare. The sexual abuse or exploitation of a child by a person responsible for the child's care is a contemptible violation of family and public trust, and is viewed by the law as warranting immediate and effective state intervention. Depending on the circumstances, the child may be considered to be in such jeopardy as to require the temporary or permanent abrogation of the parent-child relationship, and the substitution of another, more propitious legal relationship in its place.

## The Child in Need of Protection

That parents will conscientiously provide for their children's needs, and respect and safeguard their children's vulnerabilities, is the central assumption underlying the legally conferred status of parent and child. When a child is sexually abused or exploited by his or her parent, or by a person otherwise

under a duty of familial care towards the child, the law authorizes an agency of the State to intercede on the child's behalf. Each Canadian province and territory has legislation which authorizes state intervention into the affairs of a family in which a child's welfare has been placed in jeopardy. These statutes variously define, often in very broad terms, the situations that will render a child "in need of protection" so far as the law is concerned, and outline the steps which may be taken to ensure the child's well-being. In each jurisdiction a child who is suspected to be in need of protection may be "apprehended" by an official of a child protection agency. The child may be kept in care pending a judicial hearing to determine whether the child is in need of protection and, if so, the most appropriate legal means of ensuring the child's security and well-being. Although child sexual abuse is not identified in all jurisdictions as a specific harm rendering a child in need of protection, the legislation in all jurisdictions is sufficiently broad to subsume it. There is no question that a child who is sexually abused or exploited in his or her family context is "in need of protection" within the legal meaning of that phrase.

The eligibility of a young person for the protective services and ameliorative intervention afforded by child welfare agencies is contingent upon the young person's age. Legislation in each province and territory defines a "child" as a person who has yet to attain a given age, thereby delineating the class of persons at whose protection and welfare the legislation is primarily directed. For these purposes a "child" in British Columbia is a person under 19; in Prince Edward Island, Quebec, Manitoba, Alberta and the Yukon, a person under 18; and in all other provinces and territories, a person under 16. These variations betray something of the conceptual, if not the economic, arbitrariness of using age as the criterion to determine whether a person should be entitled to the benefits of a particular legal status.

Reference was made earlier to the inevitable tension between the firm policy of the law in protecting the welfare of children, on the one hand, and its policy of safeguarding the autonomy of family life, on the other. In cases of intra-familial sexual abuse, the latter consideration is subordinated to the former; the promotion of the child's physical and emotional well-being is considered paramount. Even so, the strength of the legal presumption in favour of protecting the parent-child relationship is such as to exert an appreciable influence in many areas of the child welfare system. The following principles, quoted from a 1979 child protection case, were intended to be representative of judicial attitudes on this subject:<sup>9</sup>

1. That by nature and tradition we live in a familial society founded on blood ties and natural affection which has created a legal presumption that the child belongs with its natural parent.
2. That this presumption may in the individual instance be rebutted only by the most serious reasons, in which case the State is justified in intervening and severing that natural parent-child relationship.



3. That the point at which the State is so justified in intervening is that point at which in the judgment of the Court, the child is being subjected to conditions or treatment which cannot be tolerated.
4. That the "best interest" rule applicable in interparental custody issues, whether under the Divorce Act, Family Law Reform, or similar legislation, differs from the criteria applicable in custody issues as between the parent and the State.
5. That in determining State intervention, the family environment must be examined in its particular context, as opposed to traditional "middle class" standards, and in the light of whatever potential it might have.
6. That the potential of the family is to be assessed having regard to whatever support and assistance may be offered by contemporary social service agencies, whether government or private, whose role, and indeed, whose duty it is to provide those support services.
7. That the proper role of professional social service workers is to expend their expertise in delivering that support, to inform the Court of the availability and limits of those resources, and not to pass subjective judgments with respect to disposition.
8. That the Court should intervene, and declare the natural right of the parent to the custody of the child be forfeited, severing the parent-child relationship, and grant permanent custody to the Director, only when the positive resources of the State have proved to be ineffective or inadequate, and the health of the child, whether physical or emotional, is in apprehended jeopardy.

As is implicit in these judicial comments, there are two basic issues that call for legal determination at a child protection hearing. First, is the child in need of protection or, to put the issue in more broadly legal terms, have the agencies of the State justified the necessity of intervening into the life of the child and of his or her family? And second, if so, what form should this remedial state intervention take in relation to the child and his or her family?<sup>10</sup> Where a child is found to be in need of protection, the legal disposition of the matter may take three basic forms: the child may remain at home, subject to the supervision of a child welfare agency (and subject also to the removal of the offender from the home), or the child may be removed from the home, either temporarily or permanently.<sup>11</sup> In its role as the authorized agent of the State in matters concerning the welfare of young persons, the child welfare agency is responsible for providing the broad range of custodial, medical and therapeutic services necessary to the carrying out of its mandate.

Notwithstanding the relative clarity of the legal principles pertaining to intra-familial child sexual abuse, the proper, day-to-day application of these principles by child protection workers to the unique facts of a particular case is, to understate the matter, a complex and difficult undertaking. The Committee's review of provincial child welfare legislation and its research findings concerning these issues are presented in Part V of the Report, *Child Protection Services*.



One of the principal purposes of provincial child welfare law is to protect children and youths against sexual abuse by persons who have a special duty of familial care towards them, for example, the child's parents or guardians. The nature of official interventions by child welfare authorities on the child's behalf is influenced by a recognition of the special problems posed by child sexual abuse in a family context. The institutional emphasis here is on protecting and fostering the welfare of the victimized child, rather than on punishing the abuser. In contrast, the criminal law has a wider and more denunciatory role to play where child sexual abuse or exploitation is found to occur, whether within or outside the family. The role of the criminal law in this context is considered in Chapter 12, *The Sexual Offences*.

## References

### Chapter 11: Legal Status of the Child

- <sup>1</sup> Several of the issues reviewed here have been adapted to the Canadian context from Graveson, *Status in the Common Law* (London: University of London, The Athlone Press 1953).
- <sup>2</sup> Section 91(24) of the *Constitution Act, 1867*, confers upon the federal Parliament the power to make laws in relation to "Indians, and Lands reserved for the Indians." On the special constitutional status of Indians (and hence of Indian children) in Canadian law, see Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 383-90).
- <sup>3</sup> Kempe, *Sexual Abuse, Another Hidden Pediatric Problem: The 1977 C. Anderson Aldrich Lecture* (1978), 62 *Pediatrics* 382.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> Law Reform Commission of Canada, *Working Paper 10, Limits of Criminal Law* (Ottawa: Information Canada, 1975).
- <sup>6</sup> Graveson, *Status in the Common Law* (London: University of London, The Athlone Press, 1953) at 3,20,21.
- <sup>7</sup> Blackstone, *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769), at 451.
- <sup>8</sup> Namely, the former offences of indecent assault on a female and indecent assault on a male. A January, 1983 amendment to the *Canada Evidence Act* makes the wife or husband of a person charged with a sexual offence competent and compellable to testify against his or her spouse in virtually all instances.
- <sup>9</sup> *In the Matter of Charles Littner et al.* unreported, June 3, 1979 (P.E.I.S.C. Fam. Div.).
- <sup>10</sup> Bala, Lilles, and Thompson, *Canadian Children's Law* (Toronto: Butterworths, 1982) at 144.
- <sup>11</sup> *Ibid.*





## Chapter 12

# The Sexual Offences

Canadian legislators have always considered that the sexual abuse or exploitation of young persons is a matter of serious public concern which amply justifies the sanctions of the criminal law. This concern is borne out by the history of the Canadian criminal law of sexual offences since the mid-eighteenth century. This chapter provides an overview of the major sexual offences in Canadian law,<sup>1</sup> including some recently repealed, and their evolution. Offences related to prostitution and obscenity are presented elsewhere in the Report.

### Classification of Offences

The result of the historical development of the major sexual offences is an unevenness in the protection afforded children. Some of this is due to the limitations of the concepts used in the offences, and some is due to the fact that some offences were developed without any particular consideration being given to children as victims. An example of the former is the inappropriateness of the assault model to deal with invitations to young children to touch the genitals of other persons. An example of the latter is the offence of incest which prohibits sexual intercourse between persons within certain blood relationships, but does not exempt a young victim, though the court is not required to impose any punishment on a convicted female who acted only under restraint, duress or fear.

Many of the sexual offences are act-specific; this is consistent with the focus by the Committee in its research on specific acts which, however, unlike the offences in the *Criminal Code*, are not likely to change over the years. Changes in the offences over time are understandable, as are changes in charging practices and in judicial attitudes. The danger is that the objective of providing effective protection may be lost sight of in the complex process of legislative amendment. For example, as the Committee's Recommendations demonstrate, act-specific offences can apply equally to persons of both sexes. However, it is unrealistic to insist on this where comprehensive research discloses that the specific conduct involved is committed exclusively by persons of one sex against persons of the other sex. In these cases, the aim of sexual equality in the application of the offence serves no useful purpose.

Some offences are non-specific and potentially include wide areas of human sexual behaviour. Despite their sweep, they do not necessarily provide adequate protection for either adults or children, since their very generality may compel judicial as well as legislative intervention. There is a danger that behaviour which should be prohibited will not be included. Such terms as gross indecency obscure the nature of the conduct involved, which makes it almost impossible to know whether effective protection is being provided to children in all circumstances where it is generally agreed that it should be.

The sexual offences presented in this chapter are divided into the following categories:

1. *Sexual Touching*. This category is divided into two parts. Some of the offences may fall within either part, depending upon the conduct complained of.<sup>2</sup> (One of the offences included in this category prohibits procuring a female to have illicit sexual intercourse with a person other than the procurer).
  - *Non-consensual Sexual Touching*, including intercourse with females, males and animals. This part includes: rape; the sexual assaults\*; indecent assault on a female; indecent assault on a male; buggery\* and bestiality\*; and incest\*.
  - *Consensual Sexual Touching*, including intercourse with young females and males, as well as procuring such intercourse. This part includes: sexual assaults\* and indecent assaults, where an otherwise valid consent is given by a capable person under the age of 14; buggery\*; incest\*; sexual intercourse with a step-daughter, foster daughter or female ward\*; sexual intercourse by an employer with a female employee under 21\*; sexual intercourse with a female under 14 and sexual intercourse with a female 14 or 15\*; sexual intercourse with a feeble-minded female; seduction of a female 16 or 17\*; seduction under the promise of marriage\*; and parent or guardian procuring defilement\*.
2. *Other Sexual Behaviour*. These offences are not act-specific and potentially include a wide range of sexual behaviour. This category includes: gross indecency\*; indecent acts\*; and contributing to juvenile delinquency\*.
3. *Use of Premises*. These offences are concerned with ensuring that premises are not used to facilitate the commission of sexual offences, for activity with young females similar to that which occurs in a bawdy-house, or for activity that endangers the morals of children. This category includes: corrupting children\*, owner, occupier or manager of premises permitting defilement of a female under 18\*, and vagrancy (loitering by convicted sexual offenders in or near certain locations)\*.

In the above categories, offences currently in the *Criminal Code* are marked with an asterisk (\*). Offences recently repealed are included because of their historical importance and because they were in force when the Committee undertook the collection of information on the sexual offences. However, **while the Committee examined the offences within the framework of the *Criminal Code*, its research focussed directly on the specific acts involved,**

**Table 12.1**

**The Major Sexual Offences in Canada, as of January 4, 1983**

<i>Criminal Code</i> Offence	Effect of January, 1983 Amendments			
	Maximum Sentence	Offence Introduced	Offence Unchanged	Offence Modified
Sexual Assault (section 246.1)	10 years' imprisonment or 6 months' imprisonment	X		
Sexual Assault with Threats, Weapon, or Causing Bodily Harm (section 246.2)	14 years' imprisonment	X		
Aggravated Sexual Assault (section 246.3)	life imprisonment	X		
Buggery and Bestiality (section 155)	14 years' imprisonment		X	
Incest (section 150)	14 years' imprisonment			Corroboration no longer required.
Sexual Intercourse with Step-Daughter, Foster Daughter, or Female Ward (section 153(1)(a))	2 years' imprisonment			Corroboration no longer required.
Sexual Intercourse with Female Employee Under 21 (section 153(1)(b))	2 years' imprisonment			Corroboration no longer required. Burden of proof provision & evidentiary presumption repealed. Defence of subsequent marriage repealed.
Sexual Intercourse with Female under 14 (section 146(1))	life imprisonment		X	
Sexual Intercourse with Female 14 or 15 (section 146(2))	5 years' imprisonment			Burden of proof provision & evidentiary presumption repealed.



**Table 12.1 (continued)**

**The Major Sexual Offences in Canada, as of January 4, 1983**

<i>Criminal Code</i> Offence	Effect of January, 1983 Amendments			
	Maximum Sentence	Offence Introduced	Offence Unchanged	Offence Modified
Seduction of Female 16 or 17 (section 151)	2 years' imprisonment			Same as above. Also, corroboration no longer required.
Seduction Under Promise of Marriage (Section 152)	2 years' imprisonment			Corroboration no longer required. Burden of proof provision repealed. Defence of subsequent marriage repealed.
Parent or Guardian Procuring Defilement (section 166)	14 years' if female is under 14			Corroboration no longer required.
	5 years' if female is 14 or older			
Gross Indecency (section 157)	5 years' imprisonment			Corroboration no longer required.
Indecent Act (section 169)	6 months' imprisonment		X	
Contributing to Juvenile Delinquency (section 33 of <i>Juvenile Delinquents Act</i> )	2 years' imprisonment		X	
Corrupting Children (section 168)	2 years' imprisonment		X	
Owner or Manager of Premises Permitting Defilement of Female under 18 (section 167)	5 years' imprisonment		X	
Vagrancy (section 175(1)(e))	6 months' imprisonment		X	

which are not likely to change. The result is that the findings obtained remain useful in connection with offences recently enacted, and indicate what additional changes could be made to improve protection for children and youths.

The sexual offences should be considered in the light of what has already been said about the status of the child (Chapter 11, *Legal Status of the Child*). From this point of view, there is no doubt that the *Criminal Code* attempts to provide protection for children and youths through certain specific offences. The problem is that it does not give any particular consideration to the position of children as victims of any sexual offence. There is an implicit assumption that the sexual offences operate in the same way regardless of whether the victims are adults or children. The information collected by the Committee, and presented elsewhere in this Report, belies this assumption.

## Non-Consensual Sexual Touching

### Rape

The former offences of rape and attempted rape were repealed in January, 1983 and were replaced by sexual assault offences which do not require corroboration. Under the former section 143 of the *Criminal Code*, a male person committed rape when he had sexual intercourse with a female person, who was not his wife, without her consent, or with her "consent" if it was extorted by threats or fear of bodily harm, or was obtained by impersonating her husband or by false and fraudulent representations as to the nature and quality of the act. Although the act of sexual intercourse was an element of this offence, it was the circumstances which surrounded that act and the accused's awareness of those circumstances which distinguished consensual sexual intercourse from the offence of rape. The accused must have intended to have sexual intercourse with a woman, knowing that she was not his wife and that she did not consent, or being reckless as to whether she consented.<sup>3</sup> A person who committed rape was liable to imprisonment for life.<sup>4</sup> The offence of attempted rape carried a maximum punishment of imprisonment for 10 years.<sup>5</sup>

Rape had been a crime since the earliest development of the common law,<sup>6</sup> and punishable by death for much of English and Canadian legal history.<sup>7</sup> In 1758, the Nova Scotia Assembly (Nova Scotia at that time also included what are now New Brunswick and Prince Edward Island) enacted the death penalty for rape,<sup>8</sup> but this was eventually reduced to imprisonment for life or for any term not less than seven years.<sup>9</sup> In 1841, the Province of Canada enacted that every person convicted of rape "shall suffer death as a felon".<sup>10</sup> The death penalty for rape was also prescribed by the legislature of New Brunswick prior to Confederation.<sup>11</sup> In Prince Edward Island, the death penalty for rape was abolished in 1861 and replaced by imprisonment for up to 21 years, with or without hard labour, with the male offender also liable "to be once, twice or thrice publicly or privately whipped."<sup>12</sup>

In 1869, rape was made a federal criminal offence punishable by death.<sup>13</sup> An alternative punishment of imprisonment for life, or for any term not less than seven years, was sanctioned three years later.<sup>14</sup> The 1892 *Criminal Code*

provided for the first time in Canada a statutory definition of rape, which clarified the issues of lack of consent and the degree of physical contact required between the male and female sexual organs.<sup>15</sup> It also codified the rule at common law that no male under 14 could in law commit this offence.<sup>16</sup> The definition of rape in Canadian law remained essentially unchanged from 1892 until the repeal of the rape offence in January, 1983.

A provision for whipping convicted rapists was added in 1921.<sup>17</sup> Under the law as it stood previously, only an offender convicted of attempted rape could be whipped.<sup>18</sup> Although convicted rapists were liable to the death penalty until 1955,<sup>19</sup> the sentence of death was imposed for this offence in only one case,<sup>20</sup> and in that instance, the death sentence was commuted to 20 years' imprisonment, with lashes.<sup>21</sup> The provision for whipping offenders convicted of rape or attempted rape was repealed effective July 15, 1972, as part of the abolition of corporal punishment of male criminal offenders.<sup>22</sup>

Rape was never an offence for which corroboration was required by statute, although it was subject to the firm rule of practice that caution was required before convicting the accused on the uncorroborated testimony of the complainant.<sup>23</sup> As part of the 1955 *Criminal Code* revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that it was true, was codified and made applicable to the offence of rape.<sup>24</sup> Although this provision made corroboration of the complainant's sole testimony not strictly necessary, the trial judge was still obliged to caution the jury in appropriate cases.<sup>25</sup> The requirement of corroboration where the complainant gives unsworn testimony remained intact.<sup>26</sup>

The above-mentioned statutory "corroboration warning" rule was repealed in 1976<sup>27</sup> and replaced with a provision outlining the conditions under which a complainant could be asked about her prior sexual conduct with persons other than the accused.<sup>28</sup> Section 142 of the *Criminal Code*, which was repealed in January, 1983, provided:

142. (1) Where an accused is charged with an offence under section 144 or 145 or subsection 146(1) or 149(1), no question shall be asked by or on behalf of the accused as to the sexual conduct of the complainant with a person other than the accused unless

- (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to ask such question together with particulars of the evidence sought to be adduced by such question and a copy of such notice has been filed with the clerk of the court; and
- (b) the judge, magistrate or justice, after holding a hearing in camera in the absence of the jury, if any, is satisfied that the weight of the evidence is such that to exclude it would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.

(2) The notice given under paragraph (1)(a) and the evidence taken, the information given or the representations made at a hearing referred to in paragraph (1)(b) shall not be published in any newspaper or broadcast.



(3) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (2) is guilty of an offence punishable on summary conviction.

(4) In this section “newspaper” has the same meaning as it has in section 261.

(5) In this section and in section 442, “complainant” means the person against whom it is alleged that the offence was committed.

In *Forsythe v. The Queen*,<sup>29</sup> the Supreme Court of Canada held that the intent of this provision was to balance the potential trauma and embarrassment caused to the complainant by an inquiry into her past sexual conduct with persons other than the accused, against the right of an accused to make a full answer and defence to the charge. Implicit in this statutory provision was the recognition that, at least in some instances,<sup>30</sup> the past sexual conduct of the complainant with persons other than the accused may be highly relevant to determining the truthfulness of her allegation. Chief Justice Laskin, in commenting on this “balancing of interests”, noted:<sup>31</sup>

The gain of the complainant is that whereas she may now be required to answer the question in public she may not have to do so if the Court rules against it, although she may have to submit to the question in private. As for the accused, whereas he could formerly put the question in public without necessarily being entitled to an answer, he now has the right of answer and the right to contradict it if the Court rules in his favour in the *in camera* hearing.

As part of the same enactment, protection from identification in any newspaper or broadcast was afforded to victims of rape, attempted rape, indecent assault on a female, or sexual intercourse with a female under 14.<sup>32</sup>

## Sexual Assaults

On January 4, 1983, a number of amendments to the *Criminal Code* sexual offences were proclaimed in force. They introduced sexual assault offences which can be committed by a male or a female against a male or a female; the maximum punishment available under each offence does not depend on the sex of the complainant (unlike the former offences of indecent assault on a male and indecent assault on a female). Further, a husband or wife may be convicted of sexually assaulting his or her spouse under each of the sexual assault offences, regardless of whether the spouses were living together at the time of the sexual assault.

Section 246.1 of the *Criminal Code* now provides that “every one who commits a sexual assault is guilty of (a) an indictable offence and is liable to imprisonment for ten years; or (b) an offence punishable on summary conviction”.<sup>33</sup> This offence is procedurally “hybrid”: the Crown has a discretion to proceed either by indictment or summarily, and hence, can directly influence the maximum punishment to which a person convicted of this offence will be liable. The conferring of this discretion is largely explained by the wide range

of unwanted sexual touchings comprehended by the term "sexual assault". Although "sexual assault" is not defined in the *Criminal Code*, it will likely be taken to mean either an assault<sup>34</sup> directed at a person's sexual organs, or an assault which, from the circumstances, was clearly sexually motivated. Accordingly, it could subsume everything from a threatened sexual advance<sup>35</sup> or a pinch on the behind to unwanted sexual intercourse unaccompanied by overt threats or the use or threatened use of a weapon. The ambit of the "sexual assault" offence will be determined by judicial interpretation, as cases of sexual assault are tried, and the results of those trials appealed, in Canadian courts.

Section 246.2 of the *Criminal Code* provides that:

246.2 Every one who, in committing a sexual assault,

- (a) carries, uses or threatens to use a weapon or an imitation thereof,
- (b) threatens to cause bodily harm to a person other than the complainant,
- (c) causes bodily harm to the complainant, or
- (d) is a party to the offence with any other person,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

"Bodily harm" is defined as "any hurt or injury to the complainant that interferes with his or her health or comfort and that is more than merely transient or trifling in nature."<sup>36</sup>

This offence is a more serious form of "sexual assault" and is committed when a sexual assault is attended by one of the circumstances outlined in sections 246.2(a) through (d). Sections 246.2(a) and (b) deal primarily with situations in which a complainant's acquiescence in or submission to the sexual act is induced by any of the factors mentioned, while section 246.2(c) is applicable where the sexual assault results in "bodily harm" to the complainant. The definition of "bodily harm" provided in section 246.1(2) is somewhat vague; its proper legal meaning in various factual contexts will doubtless be clarified by judicial interpretation. The section 246.2(d) provision is contravened where a sexual assault is perpetrated by more than one person, for example, the situation formerly referred to as "gang rape".

Section 246.3 of the *Criminal Code* provides that:

246.3 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

This is the most serious form of sexual assault.

Section 244 (3) of the *Criminal Code* provides that:

no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) fraud; or
- (d) the exercise of authority.

Where the Crown proves that the complainant submitted to or did not resist the accused by reason of one of these factors, the complainant's acquiescence is not considered a valid consent in law. Accordingly, an accused in this instance is guilty of a form of sexual assault, depending on the additional circumstances which attended the assault. The "vitiating" factors in section 244(3), especially those in sections 244(3)(c) and (d), are very broad and will require judicial elucidation in the case law.

The legal treatment of the consent of young persons to sexual acts was also changed by the 1983 amendments to the *Criminal Code*. Section 246.1(2) of the *Criminal Code* now provides:

246.1(2) Where an accused is charged with an offence under subsection (1) or section 246.2 or 246.3 in respect of a person under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject matter of the charge unless the accused is less than three years older than the complainant.

Accordingly, where a complainant is under 14, is capable of and does give a *de facto* consent to sexual activity with a person more than three years older, the young person's consent is nevertheless not a defence to the accused with respect to any of the "sexual assault" offences.

Where, however, the accused is less than three years older than the complainant, the complainant's consent to the sexual act is recognized by the law and serves to exonerate the accused. In addition, a capable person under 14 apparently may give a valid legal consent not only to being sexually touched by a person less than three years older, but also to being threatened, harmed, wounded, maimed or disfigured by that person. The applicability of this "less than three years older" defence to the more serious sexual assault offences in sections 246.2 and 246.3 can only be regarded in the Committee's judgment as a serious legislative oversight.

Although it is clear that at common law there are limits to the degree of physical harm to which a person may give a valid consent, where the line is to be drawn is unclear.<sup>37</sup> This problem arises most acutely in the context of sado-masochistic behaviour, in which the "assailant", for purposes of sexual gratification, visits some degree of violence on his or her willing partner. The leading



decision on the legal principles applicable to this form of conduct is the English case of *R. v. Donovan*,<sup>38</sup> in which the Court of Criminal Appeal held that, as a general rule, it is unlawful to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence, regardless of the consent of the complainant, and that sado-masochistic behaviour does not fall within any of the well-established exceptions to this rule. "Bodily harm" in this context should be taken to mean any hurt or injury calculated to interfere with the health or comfort of the complainant. The hurt or injury need not be permanent, but must be more than merely transient and trifling. These principles have been explicitly adopted by the Ontario Court of Appeal<sup>39</sup> and by the Supreme Court of Canada,<sup>40</sup> and more recently, have been acknowledged by the Quebec Court of Appeal.<sup>41</sup> They conflict with the statutory defence which now may be available where a capable person under 14 consents to a harmful sexual touching.<sup>42</sup>

An implied element in the sexual assault offence is that the accused, in committing a sexual assault, either knew that the complainant did not consent, or was reckless or indifferent to whether he or she consented. A situation may arise (albeit rarely, in light of the Committee's findings) in which an accused honestly believes that a complainant is consenting to the sexual act, while the latter is in fact withholding consent. Section 244(4) of the *Criminal Code* provides:

244. (4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

This provision makes it clear that the accused's defence of honest belief in the complainant's consent must, pragmatically if not theoretically, have some objective basis in fact and obliges the trial judge to charge the jury accordingly.

## Indecent Assault on a Female

The former offence of indecent assault on a female was repealed in January, 1983 and was replaced by sexual assault offences which do not require corroboration. Under the former section 149(1) of the *Criminal Code*, "every one who indecently assaults a female person is guilty of an indictable offence and is liable to imprisonment for five years." An indecent assault was an assault with an element of indecency and, accordingly, the offence of indecent assault on a female was committed where a person touched, attempted or threatened to touch a female person indecently and without her consent, or with her "consent" if it was obtained by false and fraudulent representations as to the nature and quality of the act. The consent of a female under 14 to the act for which the accused was charged was no defence.<sup>43</sup>

The legal concept of an “assault” causes difficulty where an accused invites a child to touch him, but neither touches nor threatens to touch the child in return. In these circumstances, English and Canadian courts have held that, since there is no assault, the question of indecent assault does not arise. In *Fairclough v. Whipp*<sup>44</sup>, the accused was urinating by a river bank where four girls, varying in age from six to nine, were playing. As one of the girls passed him, he turned to her with his penis exposed and said, “Touch it.” The girl did so, after which the accused departed. On his trial for indecent assault, the accused was acquitted. The English court reasoned:<sup>45</sup>

An assault can be constituted, without there being a battery, for instance, by a threatening gesture or a threat to use violence against a person, but [there is no authority] which says that where one person invites another person to touch him that can be said to be an assault. The question of consent or non-consent only arises if there is something which can be called an assault and, without consent, would be an assault.

The reasoning employed in *Fairclough v. Whipp*<sup>46</sup>, namely, that an invitation to someone to touch the invitor cannot, by itself, amount to an assault, has been adopted by Canadian courts. In *R. v. McCallum*,<sup>47</sup> the male accused was charged with indecent assault on a female. He had appeared nude before a young girl and had invited her to masturbate him, which she apparently did. The court held that where an accused merely invites another person to touch his private parts, but does not himself touch that person or threaten him or her by acts or gestures, there is no *assault* and therefore no *indecent* assault.<sup>48</sup> It is apparent that in these sorts of cases, the legal concept of an “assault” fails to provide an effective framework for sanctioning inappropriate sexual conduct between adults and children.<sup>49</sup>

The offence of indecent assault on a female was introduced into Canadian law in 1869,<sup>50</sup> substantially duplicating English legislation enacted eight years earlier.<sup>51</sup> It shared the same section as the offence of attempted carnal knowledge of a girl under 12; both offences carried a punishment of imprisonment for any term less than two years, with or without hard labour or whipping. The provision for “hard labour” was removed in 1886.<sup>52</sup>

Several significant changes were introduced in 1890.<sup>53</sup> The offences of indecent assault on a female and unlawful carnal knowledge were given separate sections, and the penalty for each was increased to a maximum of two years’ imprisonment, thereby rendering the offender liable to be imprisoned in a federal penitentiary.<sup>54</sup> It was further enacted that a “child of tender years” could give evidence with respect to the offences of indecent assault on a female and unlawful carnal knowledge, notwithstanding that it was not given upon oath, if the child was “possessed of sufficient intelligence to justify the reception of the evidence” and understood “the duty of speaking the truth”.<sup>55</sup> Under the common law, it had been established in the late eighteenth century that no testimony could legally be received except upon oath.<sup>56</sup> This statutory amendment rendered admissible testimony of children that would otherwise have been inadmissible. It was unquestionably motivated by a recognition that disallowing young girls to testify because they did not understand the nature of an oath



would effectively deny them much of the protection the substantive criminal law sought to afford. As a counter-balancing measure, it was further provided that evidence thus admitted had to be corroborated by evidence implicating the accused.<sup>57</sup>

Another amendment aimed directly at providing additional protection for children was enacted in 1890. The amendment provided that “it is no defence to a charge or indictment for any indecent assault on a young person under the age of 14 years to prove that he or she consented to the act of indecency”,<sup>58</sup> and complemented the increased protection from sexual intercourse that was afforded in the same enactment to girls under the age of 14.<sup>59</sup>

In the 1892 *Criminal Code*, the offence of indecent assault on a female was widened to proscribe acts where the female’s consent was obtained by false and fraudulent representations as to the nature and quality of the act.<sup>60</sup> No significant changes in this offence occurred between 1892 and the 1955 *Criminal Code* revision.

Prior to 1955, it had been authoritatively held that there was no legal requirement for corroboration in cases of indecent assault.<sup>61</sup> Even so, and especially with respect to the sworn evidence of children in sexual cases, the caveat that it was unsafe to convict on the uncorroborated evidence of the complainant applied.<sup>62</sup> As part of the 1955 *Criminal Code* revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant’s uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that it was true, was codified and made applicable to the offence of indecent assault.<sup>63</sup> This provision was repealed in 1976;<sup>64</sup> under the present law, the judge is prohibited from instructing the jury that it is unsafe to find the accused guilty in the absence of corroboration.<sup>65</sup>

The maximum term of imprisonment for the offence of indecent assault was raised in 1955 from two years to five years and the provision for whipping retained.<sup>66</sup> The whipping provision was repealed effective July 15, 1972, as part of the abolition of corporal punishment of male criminal offenders.<sup>67</sup> (The sexual assault offences which replaced this offence have already been described).

## Indecent Assault on a Male

Section 156 of the *Criminal Code*, which contained the former offence of indecent assault on a male, was repealed in January, 1983 and was replaced by sexual assault offences. Under the former section 156 “every male person who assaults another person with intent to commit buggery or who indecently assaults another male person is guilty of an indictable offence and is liable to imprisonment for 10 years”. This section created two distinct offences: assault with intent to commit buggery and indecent assault on a male. With respect to the former, although the term “buggery” is not defined in the *Code*, it is taken to mean sexual intercourse *per anum* by a man with a man or a woman. The completed act of buggery is a separate offence.<sup>68</sup>



The offence of indecent assault on a male was formerly the only exclusively homosexual offence in Canadian criminal law. An indecent assault was an assault with an element of indecency and, accordingly, the offence of indecent assault on a male was committed where a male person touched, attempted or threatened to touch another male person indecently and without the latter's consent. The consent of a person under 14 was not a defence to either of the offences in section 156.

The offence of assault with intent to commit buggery existed in pre-Confederation criminal law<sup>69</sup> and, together with the offences of attempted buggery and indecent assault on a male, first appeared as a federal criminal offence in 1869, with a maximum punishment of 10 years' imprisonment with or without hard labour.<sup>70</sup> These offences were enacted in somewhat different form in 1886, the offence of indecent assault male being limited to assaults by males on other males, and the offence of assault with intent to commit buggery being clarified as applying either to male or to female victims.<sup>71</sup>

In 1890, an amendment aimed directly at providing additional protection for children was enacted. The amendment provided that "it is no defence to a charge or indictment for any indecent assault on a young person under the age of 14 years to prove that he or she consented to the act of indecency."<sup>72</sup> This provision complemented the increased protection from sexual intercourse that was afforded in the same enactment to girls under the age of 14.<sup>73</sup>

In 1892, a provision for whipping the offender was added.<sup>74</sup> The offences of indecent assault on a male and assault with intent to commit buggery remained essentially unchanged until 1972, when the provision for whipping male offenders was repealed as part of the abolition of corporal punishment of male criminal offenders effective July 15, 1972.<sup>75</sup> (The sexual assault offences which replaced these offences have already been described).

## Buggery and Bestiality

The *Criminal Code* provides that "every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for 14 years".<sup>76</sup> Neither "buggery" nor "bestiality" is defined in the *Criminal Code*, and resort must be had to their meanings at common law. "Buggery" is sexual intercourse by a male person *per anum* of another person, either male or female.<sup>77</sup> "Bestiality" is sexual intercourse in any manner with an animal.<sup>78</sup>

In 1969, important amendments which effectively de-criminalized consensual sexual behaviour between two consenting adults were introduced into Canadian criminal law.<sup>79</sup> Section 158 of the *Criminal Code* provides that the offences in section 155 (buggery) and section 157 (gross indecency) do not apply to any consensual act committed in private between a husband and his wife, or any two persons, each of whom is 21 or older. The section further provides, however, that this defence does not apply where more than two persons take part or are present or where the act occurs in a public place.<sup>80</sup> Moreover, a

person is deemed not to consent if the consent is obtained by force or fraud, or if that person is, and the other party knows or has good reason to believe that that person is feeble-minded or insane.<sup>81</sup>

The historical basis of the offences of buggery and bestiality at common law was the biblical injunction against participating in the “abominable” sexual practices reviled in the Old Testament.<sup>82</sup> The common law of England was vehement in its condemnation of both these crimes;<sup>83</sup> this vehemence was amply reflected in the laws of the provinces of British North America prior to Confederation. The Provinces of New Brunswick<sup>84</sup> and Canada<sup>85</sup> prescribed the death penalty for acts of buggery or bestiality, and the maximum penalty in Nova Scotia was set at life imprisonment, with a minimum term of imprisonment of at least seven years.<sup>86</sup>

The first post-Confederation enactment concerning these acts provided that “whosoever is convicted of the abominable crime of buggery committed either with mankind or with an animal, shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years”.<sup>87</sup> The minimum term of imprisonment for two years was dropped in 1886<sup>88</sup> and the offence remained substantially unchanged in the 1892 *Criminal Code*.<sup>89</sup> Two changes were effected in the 1955 *Criminal Code* revision:

1. The crime was stated simply to be “buggery or bestiality”, the former term referring to sexual intercourse *per anum* between two human beings and the latter to sexual intercourse in any manner with an animal.
2. The punishment was reduced from a maximum of life imprisonment to a maximum of imprisonment for 14 years.<sup>90</sup>

The changes introduced in 1969 have already been described.

## Incest

Section 150 of the *Criminal Code* provides that the offence of incest is committed when a person, knowing that another is by blood relationship his or her parent, child, brother, half-brother, sister, half-sister, grandparent, or grandchild, has sexual intercourse with that person.<sup>91</sup> Although both parties to the act of sexual intercourse are technically guilty of the offence, the law provides that, where a female person is convicted under this section and the court is satisfied that she participated in the act of sexual intercourse under restraint, duress or fear of the male person, the court is not required to impose any punishment upon her.<sup>92</sup> Section 147 of the *Criminal Code* states that no male person shall be deemed to commit incest while he is under the age of 14 years. The maximum punishment upon conviction for incest is imprisonment for 14 years.<sup>93</sup>

Although incest was never considered a crime at common law, it attracted the interest of legislators in England more than two and a half centuries before



the eventual passage in that country of the *Punishment of Incest Act*, 1908.<sup>94</sup> According to Hogan:<sup>95</sup>

It is generally assumed that incest was first made a crime by Parliament in the Punishment of Incest Act of 1908. In fact a statute was passed in 1650 during the Interregnum for "suppressing the abominable and crying sins of Incest, Adultery and Fornication" and the Act made incest a felony punishable by death without benefit of clergy. Before that the punishment of incest lay with the ecclesiastical courts and no doubt it was the abolition of these courts under the Commonwealth which led to the Act of 1650. The Act lapsed on the Restoration and the punishment of incest was restored to the ecclesiastical courts.

In any event, the Canadian legislative experience concerning incest differs markedly from the English. Prior to Confederation, the Provinces of Prince Edward Island, New Brunswick and Nova Scotia enacted laws dealing specifically with incest. In 1854, the Province of New Brunswick enacted a statute making incest an offence carrying a maximum punishment of imprisonment for 14 years.<sup>96</sup> In 1861 and 1864, the Provinces of Prince Edward Island and Nova Scotia also enacted legislation making incest a criminal offence, carrying maximum punishments of imprisonment for 21 years<sup>97</sup> and two years<sup>98</sup> respectively. These statutes remained in force in these three provinces even after Confederation, since the authority to repeal pre-existing provincial criminal legislation was vested in 1867 in the federal Parliament.<sup>99</sup> No federal legislation was enacted to repeal them in the period between Confederation and the first appearance of incest as a federal criminal offence in 1890.<sup>100</sup>

In 1890, as part of the post-Confederation process of consolidating Canadian criminal laws, the federal Parliament enacted a statute making incest an offence.<sup>101</sup> The specified prohibited degrees of consanguinity were those of parent, child, brother, sister, grandparent and grandchild. The maximum punishment was set at 14 years' imprisonment, with male offenders also liable to be whipped. It was further provided that, "if the court or judge is of opinion that the female accused was a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section."<sup>102</sup>

The identical section was re-introduced in the 1892 *Criminal Code*.<sup>103</sup> No important statutory changes occurred in the offence of incest until 1934, when half-siblings were added to the list of prohibited degrees of consanguinity.<sup>104</sup> In the 1955 revision of the *Criminal Code*, two significant amendments were introduced. The 1890 and subsequent statutory definitions of incest provided that persons within the prohibited degrees "*who cohabit or have sexual intercourse with each other*" shall be guilty of incest. The word "cohabit" was removed from the section, there being some differences of judicial opinion whether the word "cohabit" in this context meant the same as "have sexual intercourse with".<sup>105</sup>

An even more significant change concerned whether the accused could be convicted of incest on the uncorroborated testimony of one witness. Prior to



1955, the offence of incest could be so proven.<sup>106</sup> With the 1955 *Criminal Code* revision, however, incest was added to the list of offences requiring corroboration as a matter of law,<sup>107</sup> apparently due to a perceived danger of false or vexatious allegations being brought.<sup>108</sup> The statutory requirement for corroboration in cases of incest was removed in January, 1983.<sup>109</sup>

In 1972, the additional punishment of whipping male offenders (a punishment for which male incest offenders had been liable since 1890) was removed as part of the general abolition of corporal punishment of male criminal offenders.<sup>110</sup>

## Consensual Sexual Touching

As noted, several offences listed in the preceding section (sexual assaults, indecent assaults, buggery and incest) may also be included here, depending upon the nature of the conduct involved in a complaint.

### Sexual Intercourse with a Step-Daughter, Foster Daughter or Female Ward

Section 153(1)(a) of the *Criminal Code* provides that every male person who has illicit sexual intercourse with his step-daughter,<sup>111</sup> foster daughter or female ward is guilty of an indictable offence and is liable to imprisonment for two years.

This offence was first introduced into Canadian criminal law in 1890, although in a somewhat narrower form.<sup>112</sup> The 1890 provision stated that “every one who, being a guardian, seduces or has illicit connection with his ward . . . is guilty of a misdemeanor and liable to two years’ imprisonment.” This offence was later incorporated into the 1892 *Criminal Code*.<sup>113</sup>

In 1900, the term “guardian” was widened to include “any person who has in law or in fact the custody or control of the girl or child.”<sup>114</sup> The scope of this offence was widened again in 1917, when the guardian/ward relationship was extended to include the relationships of step-parent/step-child and foster parent/foster child.<sup>115</sup> Until 1955, the section 153(1)(a) offence applied to sexual intercourse between persons of either sex who were legally related in the manner specified. In the 1955 *Criminal Code* revision, the section was amended so as to apply only to a male offender who had sexual intercourse with his step-daughter, foster daughter or female ward.<sup>116</sup> The statutory requirement for corroboration in prosecutions under section 153(1)(a) was removed in January, 1983.<sup>117</sup>

### Sexual Intercourse by an Employer with a Female Employee under 21 Years of Age

Section 153(1)(b) provides that it is an indictable offence, punishable by a term of imprisonment of up to two years, for a male person to have illicit sex-

ual intercourse with a female under 21 and “of previously chaste character” with whom he stands in an employer-employee relationship.

The section 153(1)(b) offence was first introduced into Canadian criminal law in 1890, although in a much narrower form.<sup>118</sup> The 1890 provision stated that “every one who seduces or has illicit connection with any woman or girl of previously chaste character and under the age of 21 years who is in his employment in a factory, mill or workshop, or who, being in a common employment with him, in such factory, mill or workshop, under, or in any way subject to, his control or direction, is guilty of a misdemeanor and liable to two years’ imprisonment.” This offence was later incorporated into the 1892 *Criminal Code*,<sup>119</sup> with a provision being added that an accused could not be convicted of illicit sexual intercourse with a female employee if he subsequently married her.<sup>120</sup> In 1900, the section was amended to provide that the burden of proving the female employee’s previous unchastity was on the accused.<sup>121</sup> This provision was repealed in January, 1983.

Section 153(1)(b) was extended in 1920 to include all forms of employment.<sup>122</sup> The amendments further provided that the accused might be acquitted if he was found not to be wholly or chiefly to blame for the act of sexual intercourse which took place,<sup>123</sup> and that evidence of previous sexual intercourse between the accused and the female employee could not be used to show that she was not of previously chaste character.<sup>124</sup> The latter evidentiary provision was repealed in January, 1983. The “lack of blameworthiness” defence was widened in 1959. The accused henceforth might be acquitted if the evidence did not show that he was “more to blame”, rather than “wholly or chiefly to blame”.<sup>125</sup> The requirement of corroboration was removed in January, 1983 by the repeal of the former section 139(1) of the *Criminal Code*.

## Sexual Intercourse with a Female under the Age of 14 and Sexual Intercourse with a Female who is 14 or 15 Years of Age

Section 146(1) of the *Criminal Code* makes it an offence, punishable by a maximum sentence of life imprisonment, for a male person to have sexual intercourse with a female person who is not his wife and who is under the age of 14 years. The consent of the female to the sexual intercourse is not a defence to the charge,<sup>126</sup> nor is the fact that the accused believed she was 14 years of age or older.

Section 146(2) of the *Code* makes it an offence, punishable by a maximum sentence of five years’ imprisonment, for a male person to have sexual intercourse with a female who is not his wife, is 14 or 15 years of age, and is of “previously chaste character,” regardless of whether he believes that she is 16 years of age or older. In this event, however, the court may find the accused not guilty if the evidence does not show that the accused was more to blame than the female person for the behaviour which led to the charge.<sup>127</sup> Section 147 of



the *Criminal Code* states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years.

The statutory proscription of sexual intercourse with young females, regardless of their consent to the sexual intercourse,<sup>128</sup> has a long history in Canada. Prior to Confederation, a number of colonial statutes were passed which bolstered the legal protection of young girls from premature sexual intercourse that was provided under imperial statutes applicable to British North America. In 1758, the Nova Scotia Assembly enacted a statute making it a capital felony to have sexual intercourse with a girl under 12 years of age.<sup>129</sup> This protection later took the form of two distinct offences: sexual intercourse with a girl under the age of 10, punishable by life imprisonment,<sup>130</sup> and sexual intercourse with a girl of 10 or 11 years of age, punishable by a term of imprisonment not exceeding seven years.<sup>131</sup> The Province of Canada prescribed the death penalty for males having sexual intercourse with girls under the age of 10,<sup>132</sup> and made it a misdemeanor to have sexual intercourse with a girl aged 10 or 11, the punishment for such offence being left to the discretion of the court.<sup>133</sup> A comparable statutory scheme concerning girls under the age of 10 and of 10 or 11 years of age was also in force in New Brunswick prior to Confederation.<sup>134</sup>

Upon Confederation in 1867, the authority to enact laws in relation to criminal law and procedure was conferred on the federal Parliament<sup>135</sup> and the process of making criminal law and procedure uniform throughout Canada began shortly thereafter. In 1869, it was made a federal criminal offence, punishable by death, to have sexual intercourse with a girl under the age of 10.<sup>136</sup> Sexual intercourse with a girl aged 10 or 11 was made a distinct offence carrying a maximum punishment of seven years' imprisonment,<sup>137</sup> as was an attempt to have sexual intercourse with a girl under the age of 12, which carried a punishment of imprisonment for any term of less than two years, with or without hard labour or whipping.<sup>138</sup> The punishment for having sexual intercourse with a girl under the age of 10 was reduced in 1877 from death to a term of imprisonment for life or for any term not less than five years.<sup>139</sup>

In 1886, statutory protection was also afforded against any person who "seduces and has illicit connection with any girl of previously chaste character, or who attempts to have illicit connection with any girl of previously chaste character, being in either case of or above the age of 12 years and under the age of 16 years,"<sup>140</sup> with a maximum punishment of two years' imprisonment. This qualified form of protection concerning girls between 12 and 16 was reformulated in 1890. The seduction offence was made to apply to girls between 14 and 16,<sup>141</sup> whereas the "unlawful sexual intercourse" provisions, which previously had applied only to girls under the age of 12, were extended to provide protection against sexual intercourse for girls under the age of 14.<sup>142</sup>

The 1892 *Criminal Code*<sup>143</sup> retained the offence of seduction of a girl of previously chaste character between 14 and 16,<sup>144</sup> and further extended the



protection for girls under 14 by making the accused's belief concerning the girl's age irrelevant to the charge. Sections 269 and 270 of the 1892 *Criminal Code* provided:

269. Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of 14 years, not being his wife, whether he believes her to be of or above that age or not.

270. Every one who attempts to have unlawful carnal knowledge of any girl under the age of 14 years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped.

In 1893, the offence of "seducing *and* having illicit connection with" girls of previously chaste character between the ages of 14 and 16 was widened to proscribe "seducing *or* having illicit connection with" such girls,<sup>145</sup> rendering proof of seduction unnecessary and hence providing additional protection to girls within this age group.<sup>146</sup>

Another reformulation of this offence occurred in 1920, when the "seduction" offence was made applicable to girls between the ages of 16 and 18, while the "unlawful sexual intercourse" provision (for which seduction need not be proved) concerning girls of previously chaste character between the ages of 14 and 16 was retained, with the maximum punishment increased from two to five years. With respect to this latter offence, the jury might acquit the accused if the evidence did not show that the accused was "wholly or chiefly to blame."<sup>147</sup> This provision was replaced in 1959 by the phrase "more to blame than the female person",<sup>148</sup> to improve statutory clarity.<sup>149</sup> In 1934, it was provided that sexual intercourse by the accused with the girl on a prior occasion shall be deemed not to be evidence that she was not of previously chaste character.<sup>150</sup> The requirement that the accused carry the burden of proving that the female person was not of previously chaste character was made applicable to the section 146(2) offence in the 1955 revision of the *Criminal Code*.<sup>151</sup> The January, 1983 repeal of former section 139 of the *Criminal Code* included the latter two provisions.

Prior to the 1955 *Criminal Code* revision, the offences of unlawful sexual intercourse with a girl under 14, or with a girl aged 14 or 15, required corroboration of the complainant's evidence before a conviction could be entered.<sup>152</sup> As part of the 1955 revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that her evidence was true, was codified and made applicable to the unlawful sexual intercourse offences.<sup>153</sup> This provision was repealed in 1976;<sup>154</sup> under the current law, the unsworn testimony of a child is subject to the requirement of corroboration.<sup>155</sup>

With respect to the punishment for which the accused is liable upon being convicted of this offence, although whipping was traditionally available as a punishment for the offence of unlawful sexual intercourse with a female under

the age of 14, corporal punishment for this and all other offences was abolished in Canada effective July 15, 1972.<sup>156</sup>

## Sexual Intercourse with a Feeble-Minded Female

The offence of having sexual intercourse with a feeble-minded female was repealed in January, 1983. The former section 148 of the Criminal Code made it an indictable offence, punishable by imprisonment for up to five years, for any male person who, under circumstances that did not amount to rape, had sexual intercourse with a female person who was not his wife and who was, or whom he knew or had good reason to believe was, feeble-minded, insane or was an idiot or imbecile. In this context, "feeble-minded person" meant a person "in whom there exists and has existed from birth or from an early age, mental defectiveness not amounting to imbecility, but so pronounced that he requires care, supervision and control for his protection or for the protection of others."<sup>157</sup>

Although there have been very few reported decisions concerning this offence, its basis appeared to be the combination of the female person's defective mental capacity and the male person's appreciation of and unscrupulous disregard of this fact, culminating in sexual intercourse.<sup>158</sup> The offence envisaged a situation in which a female person, although of defective mental capacity, was capable of giving and did give her consent to sexual intercourse. In order to discourage exploitive sexual behaviour of this kind, the male was made culpable, notwithstanding that the woman so afflicted apparently consented to the sexual intercourse. A female who was under one of the incapacities outlined in section 148 could, however, give a valid consent to what would otherwise have been an indecent assault: it was sexual intercourse in these circumstances that section 148 was directed at. Where the female person's mental defectiveness was such as to render her incapable of giving a valid consent to sexual intercourse, the offence of rape was the more appropriate charge.<sup>159</sup>

The offence of having sexual intercourse with a feeble-minded female first appeared in Canadian criminal law in 1886<sup>160</sup> and was modelled on English legislation enacted in the previous year.<sup>161</sup> A punishment of up to two years' imprisonment was prescribed for every one who "unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the offence that the woman or girl was an idiot or imbecile."<sup>162</sup> The section was amended in 1887 to include sexual intercourse with females who were insane<sup>163</sup> and, in the 1892 *Criminal Code*, the offence was also made applicable to women who were deaf and dumb with the penalty being raised to four years' imprisonment.<sup>164</sup>

In 1900, additional legislative protection was afforded against this form of exploitation. The requirement that the accused know of the female person's incapacity was modified, so that henceforth the prosecution needed only to

prove that the accused had good reason to believe that the female was mentally infirm.<sup>165</sup> The category of females who were “feeble-minded” was added to this section in 1927, thus enlarging its scope.<sup>166</sup>

The 1955 *Criminal Code* revision effected three changes to this offence:<sup>167</sup>

1. The proscription against sexual intercourse with females who were deaf and dumb was removed.<sup>168</sup>
2. The offence was made inapplicable to acts of sexual intercourse between an accused and his wife.
3. The maximum punishment was raised from four to five years’ imprisonment.

Section 139(1) of the *Criminal Code*, which formerly provided that no accused could be convicted of the section 148 offence upon the evidence of only one witness unless the evidence of that witness was corroborated in a material particular by evidence that implicated the accused, was repealed in January, 1983.

## Seduction of a Female Who is 16 or 17 Years of Age

Section 151 of the *Criminal Code* makes it an indictable offence, punishable by imprisonment for up to two years, for any male person of 18 years of age or more to seduce a female person of previously chaste character who is 16 years or more but fewer than 18 years of age. “Seduction” in this context connotes something more than inducing a woman to have sexual intercourse;<sup>169</sup> it involves as a further element “the surrender by a woman of her chastity to a man as the result of his persuasion, solicitation, promises, bribes or other means without the employment of force.”<sup>170</sup> The “surrender of a woman’s chastity” contemplated by this section is nonetheless a consensual one. Where the complainant does not consent, a charge of sexual assault is more appropriate.<sup>171</sup>

The seduction offence in section 151 of the *Criminal Code* had its origin in an 1886 enactment which proscribed the seduction of girls of previously chaste character between the ages of 12 and 16.<sup>172</sup> The age group to which this offence applied was increased in 1890 to girls 14 and 15,<sup>173</sup> and in 1920 to girls 16 and 17,<sup>174</sup> in order to provide a sanction against the seduction of young women whose ages put them just outside the protection afforded by the “unlawful sexual intercourse” offences, which since 1920 have applied to girls under 16.

In 1920, the section was amended to provide that proof of previous sexual intercourse between the parties was not to be considered evidence that the girl was not of previously chaste character, and that the jury might acquit, if in their view, the accused was not wholly or chiefly to blame.<sup>175</sup> This latter provision was removed in the 1955 *Criminal Code* revision,<sup>176</sup> as it was considered that a man who seduces a young woman of this age was necessarily culpable.<sup>177</sup>



The need for corroboration and the burden on the accused to prove the complainant was not of previously chaste character, which were requirements in the former sections 139(1) and (2) of the *Criminal Code*, were repealed in January, 1983.

## Seduction under Promise of Marriage

Section 152 of the *Criminal Code* makes it an indictable offence, punishable by imprisonment for up to two years, for any male person 21 or older who, under promise of marriage, seduces an unmarried female person of previously chaste character who is less than 21 years of age.

The offence of seduction under promise of marriage was first introduced into Canadian criminal law in 1886<sup>178</sup> and was modelled on American state legislation,<sup>179</sup> there being no English precedent for this offence.<sup>180</sup> It originally applied only to girls under the age of 18, but was amended in 1887 by raising this age to 21.<sup>181</sup> The 1892 *Criminal Code* included a provision that the subsequent marriage of the parties was a complete defence to the charge.<sup>182</sup> This provision was deleted when the former section 139(2) of the *Criminal Code* was repealed in January, 1983. The need for corroboration and the burden on the accused to prove the complainant was not of previously chaste character, which were requirements in the former sections 139(1) and (2) of the *Criminal Code*, were also repealed in January, 1983.

## Parent or Guardian Procuring Defilement

Section 166 of the *Criminal Code* makes it an offence for a parent or guardian of a female person to procure her to have illicit sexual intercourse with another person or knowingly to receive the avails of her seduction, defilement or prostitution. This offence is punishable by imprisonment for 14 years, if the female person is under 14, or by imprisonment for five years, if she is age 14 or older.

The offence of procuring, by false pretences, a female under 21 to have illicit sexual intercourse first appeared in Canadian criminal law in 1869;<sup>183</sup> it was on this offence that the more specific prohibition directed at parents and guardians was based. In 1890, the offence relating to a parent or guardian of a female person who procures her defilement was enacted, with the penalty being made contingent on whether the female in question was under 14 or 14 or older.<sup>184</sup> In 1892, it was provided that no person accused of this offence shall be convicted on the evidence of one witness unless that witness was corroborated in a material particular by evidence implicating the accused.<sup>185</sup> This statutory corroboration requirement was repealed in January, 1983.

## Other Sexual Behaviour

### Gross Indecency

Section 157 of the *Criminal Code* provides that “every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years”. The phrase “act of gross indecency” has never been defined by statute. Although it was originally limited to homosexual male behaviour, it now refers to an ill-defined range of homosexual and heterosexual behaviours variously involving adults, adolescents or children, depending on the circumstances.

The offence of gross indecency first appeared in Canadian law in 1890,<sup>186</sup> and was modelled on an English statute enacted five years earlier.<sup>187</sup> It was apparently intended to proscribe homosexual male behaviours such as fellatio and mutual masturbation, which were not crimes at common law.<sup>188</sup> The offence could only be committed by a male with another male; it was irrelevant whether the act occurred in public or in private. A comparable provision was included in the 1892 *Criminal Code*.<sup>189</sup>

An examination of the parliamentary debates upon the introduction of the “gross indecency” offence in 1890 and upon its reintroduction into the 1892 *Criminal Code* suggests that the legislators who supported the provision had little idea what range of behaviours would be proscribed by it,<sup>190</sup> apart from its applicability to homosexual male behaviour generally. In any event, the offender was liable to five years’ imprisonment or to be whipped. Under the original English statute, the punishment was limited to imprisonment for any term not exceeding two years.

The offence remained unchanged from 1892 until the 1955 *Criminal Code* revision, when it was widened to apply to acts committed by or between persons of either sex. At the same time, the provision for whipping as an additional punishment was dropped.<sup>191</sup> The 1969 amendments to the *Code*, which effectively de-criminalized private sexual behaviour between two consenting adults, have already been described under “Buggery and Bestiality.” Corroboration is not required in prosecutions for gross indecency.<sup>192</sup>

### Indecent Act

Section 169 of the *Criminal Code* provides that it is a criminal offence wilfully to do an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person. A public place is expressed as including any place to which the public has access as of right or by invitation, express or implied.<sup>193</sup> The *Criminal Code* does not define the term “indecent act” and, while this offence typically refers to acts of male exposure, it subsumes also a variety of inappropriate behaviours from profaning a religious ceremony to masturbating in a window or “streaking” in public.

Where the act is done in a public place, the mere wilful doing of the act is an offence, regardless of whether the person intends to insult or offend any individual present. Where, however, the act is done in a place other than a public place, the person's intent to insult or offend another person is an element of the offence.<sup>194</sup> The offence of indecent act is punishable on summary conviction, the offender being liable to a fine of not more than \$500 or to imprisonment for six months, or to both.<sup>195</sup>

Although the offence of outraging public decency (of which the public exposure by a male of his genitals was the most common instance) had been a common law misdemeanour in England since the seventeenth century,<sup>196</sup> in 1822, the English Parliament enacted a statute on "vagrancy" which specifically proscribed acts of indecent exposure.<sup>197</sup> It was from this statute that the first Canadian legislation on this topic derived.

In 1869, the Canadian Parliament enacted a comparable statutory scheme dealing with the apparently widespread problem of "vagrancy". A vagrant was defined in remarkably broad terms as including all idle persons not having visible means of support, all common prostitutes and keepers or patrons of bawdy-houses or houses of ill-fame who could not give a satisfactory account of themselves, all persons who lived primarily by gaming or crime or on the avails of prostitution, and "all persons openly exposing or exhibiting in any street, road, public place or highway any indecent exhibition, *or openly or indecently exposing their persons*".<sup>198</sup> A person found to be a vagrant was liable to imprisonment for a term not exceeding two months, with or without hard labour, or to a fine not exceeding \$50, or to both. In 1874, the maximum term of imprisonment for this offence was increased to imprisonment for six months,<sup>199</sup> and in 1881 it was made clear that this term of imprisonment could be imposed with or without hard labour.<sup>200</sup> In 1886, the vagrancy provisions were incorporated into the omnibus statute entitled *An Act respecting Offences against Public Morals and Public Convenience*,<sup>201</sup> but were not changed in substance.

A legal re-classification of exhibitionistic behaviour occurred in 1890.<sup>202</sup> The offender's act of indecent exposure in a public place, rather than his status as a vagrant, constituted the offence.<sup>203</sup> More changes were introduced two years later. In the 1892 *Criminal Code*, the phrase "wilfully commits any indecent exposure of the person" was replaced with the more general provision, "wilfully . . . does any indecent act", and another section was added which proscribed indecent acts calculated to insult or offend any person present, regardless of where the act took place.<sup>204</sup> The offence as defined in the 1892 *Criminal Code* remained unchanged until the 1955 *Criminal Code* revision, when the concept of "public place" was clarified<sup>205</sup> and the allowable fine for this offence was increased from \$50 to \$500, as part of the standardization of penalties for summary conviction offences.<sup>206</sup>

## Contributing to Juvenile Delinquency

When the *Juvenile Delinquents Act*<sup>207</sup> was repealed and replaced in April, 1984 by the *Young Offenders Act*,<sup>208</sup> the offences of "juvenile delinquency" and "contributing to juvenile delinquency" ceased to exist in Canadian law.



Section 33(1) of the *Juvenile Delinquents Act* provided:

33 (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully,

- (a) aids, causes, abets or connives at the commission by a child of a delinquency, or
- (b) does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent or likely to make any child a juvenile delinquent,

is liable on summary conviction before a juvenile court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years, or to both.

(4) It shall not be a valid defence to a prosecution under this section either that the child is of too tender years to understand or appreciate the nature or effect of the conduct of the accused, or that notwithstanding the conduct of the accused the child did not in fact become a juvenile delinquent.

Section 2(1) of the *Juvenile Delinquents Act* stated that a "child" meant "any boy or girl apparently under the age of 16 years, or such other age as may be directed in any province pursuant to subsection (2)". Subsection (2) specified under age 18. Accordingly, the age below which a person was a "child" for the purposes of the application of the Act varied among the provinces: in Manitoba and Quebec, a "child" meant a person under 18; in British Columbia and Newfoundland, a "child" meant a person under 17; and everywhere else in Canada, a "child" meant a person under 16.

A child was considered a "juvenile delinquent" if he or she "violates any provision of the *Criminal Code* or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or *who is guilty of sexual immorality or any similar form of vice*, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute".<sup>209</sup> Accordingly, a person "contributes to juvenile delinquency" by behaving in a manner that does or is likely to cause a child to become a juvenile delinquent, for example, by causing the child to engage in or be exposed to "sexual immorality or any similar form of vice." The term "sexual immorality or any similar form of vice" was sufficiently vague to cover any number of sexual behaviours and to allow for disagreements of judicial opinion.

The offence of contributing to juvenile delinquency had been part of the *Juvenile Delinquents Act* since the Act was first passed in 1908.<sup>210</sup> It originally carried a maximum penalty of a fine not exceeding \$500 or imprisonment not exceeding one year, or both.<sup>211</sup> This was increased in 1924 to a fine not exceeding \$500, or imprisonment not exceeding two years, or both.<sup>212</sup> In 1936, a provision was added which prevented the accused from pleading either that the child was too young to understand the nature of the accused's conduct, or that

notwithstanding such conduct, the child did not in fact become a juvenile delinquent.<sup>213</sup> It served to emphasize that the offence of "contributing" was directed more at the accused's inappropriate conduct than at the arguable consequences of that conduct for the child.

Judicial decisions which stated that an accused could not contribute to the delinquency of a child who was already a delinquent appear to have conflicted with the obvious policy of section 33(4).<sup>214</sup> The offence of contributing to juvenile delinquency remained substantially unchanged between 1936 and the repeal of this legislation in April, 1984.

The philosophy underlying the *Juvenile Delinquents Act* was expressed in the following terms:<sup>215</sup>

The modern Juvenile Court represents a socio-legal mechanism empowered to deal with juveniles in such a way as to divorce the treatment of children from the processes of law that have been created to deal with adult offenders. There is a statutory requirement that the Court have regard to the child's welfare. The juvenile is not convicted of a criminal offence and sentenced to punishment; instead he is adjudicated a delinquent and treatment is administered. In theory, the juvenile justice system is totally committed to rehabilitation and to "the best interests of the child."

This philosophy was increasingly challenged in recent years, and the debate over Canadian juvenile justice policy in the last decade culminated in the federal *Young Offenders Act*,<sup>216</sup> which repealed the *Juvenile Delinquents Act*. The *Young Offenders Act* sets out the following general principles:<sup>217</sup>

3 (1) It is hereby recognized and declared that

- (a) while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions and society must be afforded the necessary protection from illegal behaviour;
- (b) young persons who commit offences require supervision, discipline and control, but because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;
- (c) where it is not inconsistent with the protection of society, measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences;
- (d) young persons have rights and freedoms in their own right, including those stated in the Canadian Bill of Rights, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;
- (e) in the application of this Act, the rights and freedoms of young persons include the right to the least possible interference with freedom, having regard to the protection of society, the needs of young persons and the interests of their families;

- (f) young persons have the right, in every instance where they have rights or freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are; and
- (g) parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when all measures that provide for continuing parental supervision are inappropriate.

(2) This Act shall be liberally construed to the end that young persons will be dealt with in accordance with the principles set out in subsection (1).

Under the new scheme introduced in April, 1984, the age of criminal responsibility was raised from seven to 12 (young persons under 12 may, where appropriate, be dealt with pursuant to provincial law); the upper age limit of persons to whom the Act applies was made uniform at age 18 (those under 18 are dealt with under the *Young Offenders Act*, those 18 or older are dealt with under the adult criminal justice system); and the Act only applies to young persons who commit specific offences under federal law.

## Use of Premises

### Corrupting Children

Section 168 of the *Criminal Code* makes it an offence to participate, in the home of a child, in adultery or sexual immorality and thereby endanger the morals of the child or render the home of a child an unfit place for the child to be in. "Child" in this context means a person who is or who appears to be under the age of 18.<sup>218</sup> This offence is punishable by imprisonment for two years.

The *Criminal Code* imposes two procedural limitations on the charging of this offence. The first also applies to sections 151, 152, 153(1)(b), 166 and 167 of the *Code*, that is, that no proceedings for an offence under the section shall be commenced more than one year after the time when the offence was committed.<sup>219</sup> The second is that unless proceedings under this section are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court, the consent of the Attorney General is necessary in order to charge a person with the offence.

What is now section 168 of the *Criminal Code* was first introduced into Canadian criminal law in 1918.<sup>220</sup> It provided that "any person who, in the home of a child, by indulgence in sexual immorality, in habitual drunkenness or in any other form of vice, causes such child to be in danger of being or becoming immoral, dissolute or criminal, or the morals of such child to be injuriously affected, or renders the home of such child an unfit place for such child to be in", was liable on summary conviction to a fine not exceeding \$500, or to imprisonment for a term not exceeding one year, or to both. A "child"



was defined as a boy or girl apparently or actually under the age of 16 years; that the child was too young to understand or appreciate the nature of the “immoral” acts to which he or she was exposed was stated to be irrelevant to the charge.

In 1933, the offence was amended to read “every one who, in the home of a child, participates in adultery . . .”,<sup>221</sup> in consequence of a court decision which held that the mere fact of being adulterous in the home of a child was not sufficient to warrant a conviction under this section.<sup>222</sup> The amendment further provided that proof of adultery, sexual immorality or habitual drunkenness in the home of a child raised an irrebuttable legal presumption that the child’s morals were thereby endangered. This statutory presumption was qualified two years later by inclusion of a provision that a common law relationship did not of itself endanger the morals of a child who was a product of that relationship.<sup>223</sup>

A number of changes to this offence were effected by the 1955 *Criminal Code* revision:

1. The irrebuttable legal presumption that a child’s morals were endangered upon proof of the described conditions, was dropped.
2. The definition of “child” was amended to read, “a person who is or appears to be under the age of 18 years”, in order to make it conform to the upper age-limit under the *Juvenile Delinquents Act*.
3. The offence was made indictable and the penalty increased to a term of imprisonment not exceeding two years.<sup>224</sup>

This offence has remained in its present form since 1955.

## Owner, Occupier or Manager of Premises Permitting Defilement of a Female Person under 18 Years of Age

Section 167 of the *Criminal Code* makes it an offence knowingly to permit a female person under the age of 18 to use premises, of which one is the owner, occupier or manager, for the purpose of having illicit sexual intercourse with a particular male person or with male persons generally. A person convicted of this offence is liable to imprisonment for five years.

This offence first appeared in Canadian criminal law in 1886 and was modelled on English legislation enacted in the previous year.<sup>225</sup> The 1886 provision stated that “any person who, being the owner or occupier of any premises, or having, or acting, or assisting in the management or control thereof, induces, or knowingly suffers, any girl . . . to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally,” was liable to imprisonment for 10 years if the girl was under 12, or to imprisonment for two years if the girl was 12 or older, but not yet 16.<sup>226</sup> It was further pro-

vided that, where the accused had reasonable cause to believe that the girl was 16 or older, such belief was a valid defence to the charge.<sup>227</sup>

A series of amendments in the ensuing 15 years increased the statutory protection from the forms of exploitation contemplated by this offence. In 1890, the punishment of 10 years' imprisonment was made applicable to offences involving girls under 14, whereas this penalty had previously applied only where girls under 12 were involved.<sup>228</sup> The 1892 *Criminal Code* adopted this provision, and repealed the statutory defence which previously had operated to exonerate an accused who reasonably believed the girl to be 16 or older.<sup>229</sup> In 1900, the upper age limit of girls protected by this section was raised from 16 to 18, with the penalties again depending on whether the girl was under 14, or between 14 and 18.<sup>230</sup>

The only significant changes in this offence since the turn of the century were effected in the 1955 revision of the *Criminal Code*. The maximum sentence for this offence was set at five years' imprisonment, eliminating the former penal distinction based on whether the girl in question was under 14, or 14 or older but not yet 18;<sup>231</sup> and the statutory requirement for corroboration of a sole witness's testimony, which had applied to this offence since 1892,<sup>232</sup> was removed.<sup>233</sup> The rationale was that, since this offence was a cognate form of the bawdy-house offences and since the latter did not require corroboration, corroboration in this context was similarly unnecessary.<sup>234</sup>

## Vagrancy

Section 175(1)(e) of the *Criminal Code* provides that "every one commits vagrancy who, having been at any time convicted of an offence under a provision mentioned in paragraph 689(1)(a) or (b), is found loitering or wandering in or near a school ground, playground, public park or bathing area". A person convicted of this offence is punishable on summary conviction.<sup>235</sup>

This form of the vagrancy offence was introduced into Canadian criminal law in 1951<sup>236</sup> and was intended to provide a sanction against convicted sexual offenders found loitering in places frequented by children. Offenders previously convicted of (among other offences) rape, attempted rape, sexual intercourse with a female under 14, sexual intercourse with a female 14 or 15, indecent assault on a female or a male or gross indecency were subject to the prohibition.

Due, however, to a drafting error in the most recent re-enactment of this offence, the section 175(1)(e) provision cannot be charged, since the reference to "paragraph 689(1)(a) or (b)" fails to refer to any of the above offences. The necessary legislative amendments were not introduced in January, 1983.

## Consent

The preceding classification of offences demonstrates the difficulty of arriving at any comprehensive statement of the role of consent in the major

sexual offences. Some of the current offences involving sexual touchings may be either non-consensual or consensual, depending upon the conduct complained of. Of these offences, those which mention consent do so in relation to age and the same is true of the offences involving consensual sexual touching.

The offences involving other sexual behaviour, which are not act-specific and which potentially include a wide range of sexual behaviour do not mention consent, but the exception to one of these offences does, in relation to age, and the exception also applies to an offence which involves a sexual touching and which may be either non-consensual or consensual.

The offences involving the use of premises do not mention consent, though age is an element in two of the offences.

The form of the offences and the exception provisions reflect different approaches over time as well as the need to accommodate the existing scheme of offences and defences. A brief case study of the former indecent assault

**Table 12.2**  
**Offences Involving Sexual Intercourse**  
**Where the Age of the Female is Not an Element**

<i>Criminal Code Offence</i>	Effect of January, 1983 Amendments		
	Maximum Sentence	Offence Repealed	Offence Modified
Rape (formerly sections 143-145)	(formerly) life imprisonment	X	
Incest (section 150)	14 years' imprisonment		Corroboration no longer required.
Sexual Intercourse with Step-Daughter, Foster Daughter, or Female Ward (section 153(1)(a))	2 years' imprisonment		Corroboration no longer required.
Sexual Intercourse with Feeble-Minded Female (formerly section 148)	(formerly) 5 years' imprisonment	X	
Parent or Guardian Procuring Defilement (section 166)	14 years' if female is under 14		Corroboration no longer required.
	5 years' if female is 14 or older		



**Table 12.3**  
**Offences Involving Sexual Intercourse**  
**Where the Age of the Female is an Element**

<i>Criminal Code Offence</i>	Effect of January, 1983 Amendments		
	Maximum Sentence	Offence Unchanged	Offence Modified
Sexual Intercourse by Employer with Female Employee under 21 (section 153(1)(b))	2 years' imprisonment		Corroboration no longer required. Burden of proof and evidentiary presumption repealed. Defence of subsequent marriage repealed.
Sexual Intercourse with Female under 14 (section 146(1))	life imprisonment	X	
Sexual Intercourse with Female 14 or 15 (section 146(2))	5 years' imprisonment		Burden of proof provision and evidentiary presumption repealed.
Seduction of Female 16 or 17 (section 151)	2 years' imprisonment		Corroboration no longer required. Burden of proof provision and evidentiary presumption repealed.
Seduction of Female under 21 under Promise of Marriage (section 152)	2 years' imprisonment		Corroboration no longer required. Burden of proof provision repealed. Defence of subsequent marriage repealed.
Owner or Manager of Premises Permitting Defilement of Female under 18 (section 167)	5 years' imprisonment	X	

offences and the current sexual assault offences illustrates the importance of re-examining the question of consent, especially in relation to age, in the development of new sexual offences, as well as the problems which can result from including consensual as well as non-consensual conduct in the same offence.<sup>237</sup>

Section 140 of the *Criminal Code* provides that:

Where an accused is charged with an offence under section 146 (sexual intercourse with a female under 14 or 14 but under 16) in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.

Section 140 implicitly recognizes that a young girl who understands the nature of the sexual act may give an otherwise valid consent to it.<sup>238</sup> Statute makes the consent irrelevant. While statute had long prohibited sexual intercourse with children through “carnal knowledge” provisions, it was not until an English statute of 1880<sup>239</sup> that the consent of a child under 13 years-old was declared not to be a defence to a charge of indecent assault. For most of the nineteenth century prior to the enactment of this statute, indecent assault was charged as common assault. Judges contrasted charges of common assault with those involving carnal knowledge, where statutory intervention had been necessary to make the girl’s consent irrelevant, and considered that, in the absence of a statutory provision, consent to an assault could be given where the child understood the nature of the act.<sup>240</sup> G.W. Burbidge, writing on the Canadian criminal law as it stood on September 1, 1889, commented that:

“This unsatisfactory state of the law as to the consent of young persons has been remedied in England both as to boys and girls by the Act 43 & 44 Vict. c. 45 [1880], by which it is enacted that it shall be no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency. A similar statute could, with advantage, be passed in Canada.”<sup>241</sup>

A similar provision was enacted in Canada in 1890,<sup>242</sup> with the age of 14 substituted for 13.<sup>243</sup> The advantage of the new legislation lay in the fact that convictions could be obtained because the cases which allowed consent by young children to constitute defences to indecent assault charges no longer applied.<sup>244</sup> However, the inclusion of consensual touching of children in assault offences prefigured later problems in connection with consent to physical harm.

The limitations on the kind of physical harm to which a valid consent can be given by anyone were articulated in the 1934 English case of *R. v. Donovan*,<sup>245</sup> and are now contained in section 245.1(2) of the *Criminal Code*, which defines “bodily harm” as “any hurt or injury to the complainant that interferes with his or her health or comfort and that is more than merely transient or trifling in nature.” It was pointed out earlier in the chapter in the discussion of the new sexual assault offences that the exception provision in sec-

tion 246.1(2) of the *Criminal Code*, where the accused is less than three years older than a consenting complainant who is less than 14, may allow a child under 14 to give a valid consent to being injured by a person less than three years older. The exception provision was simply an attempt to provide a defence for the sexual assault provisions that Bill C-53 (which was not enacted) had provided for the proposed offence of sexual misconduct with a person under age 14. However, while the defence in Bill C-53 would have prevented a conviction for sexual misconduct, it would not have prevented a conviction for sexual assault causing injury under the Bill's sexual assault provisions, which did not mention consent. The wording of the exception provision in section 246.1(2) implies that consent by a complainant who is less than 14 constitutes a defence to even the most serious sexual assault offences. If the facts disclose consensual sexual intercourse with a child under 14, a prosecutor could still charge under s. 146(1), which was to have been repealed by Bill C-53. There is an ironic parallel here with the situation in Canada prior to the 1890 legislation.<sup>246</sup>

Once the fixed age of 14 is removed for the purposes of the exception provision, the consent that is required is governed by the common law and section 244(3) of the *Criminal Code*. This section seems more useful in connection with adults. The factors mentioned in the section (the application of force, threats or fear of the application of force, fraud and the exercise of authority) would vitiate the consent given by children even at common law,<sup>247</sup> and these factors will not necessarily be present in the case of young children. To this extent, the nature of the special protection needed by children was overlooked.

What is regrettable is that the existing protection for children has been eroded, since the common law position was (and presumably still is) that the consent of a young child can constitute a defence to an assault.<sup>248</sup> In this regard, the assumption may have been made that for the purposes of the exception provision, a valid consent could not be given by a child of, say, less than 12 years-old. The legal history of child victims of indecent assaults shows that the effective protection of children requires greater certainty.<sup>249</sup> As with the former indecent assault legislation, a minimum age for giving valid consent must be specified. At the same time, the Committee's findings regarding the sexual exploitation of children by youths not much older than themselves<sup>250</sup> indicate the risks involved in retaining the exception in any form.

## Major Legal Trends

As the preceding synopsis indicates, the Canadian criminal law of sexual offences (especially as it relates to children and young persons) has been shaped more by perceived necessity than by logical rigour. Accurate historical generalizations are difficult to make; there is always the danger of attributing to a succession of past legislators a legal strategy which they themselves may never have contemplated. Even so, **based on our knowledge of Canadian legis-**



lative history in this regard, a number of broad conclusions are justified. These conclusions help to point out the strengths and the weaknesses of the law of sexual offences up to January, 1983 and provide a basis for evaluating changes in the law.

1. *Sexual Intercourse with Girls.* The act of sexual intercourse, especially when engaged in with girls under a certain age, has traditionally been viewed as conduct warranting separate legal treatment. The several "sexual intercourse" offences cited in the review bear out this observation.
2. *Ages of Girls Protected.* The ages of girls sought to be protected by the sexual intercourse offences have been increased over the years. Where the girl is under 14, the law emphasizes in several ways the severity with which it views this conduct: by making the girl's consent to the sexual intercourse no defence to the charge; by making the accused's belief that the girl was over 14 no defence to the charge; and by making the penalty for the offence introduced in January, 1983 equivalent to that of the former offence of rape, namely, life imprisonment.

Similarly, less absolute protection from sexual intercourse in various circumstances (sexual offences with females 14 and 15 and the seduction offences) was eventually provided for young females up to the age of 21.

3. *Other Forms of Sexual Conduct with Young Persons.* Concerning other forms of sexual conduct (the former indecent assault offences), in the case of males and females under age 14, the law also provided absolute protection. Here again, the fact that the young person consented to the sexual act was not a defence to the charge. Further, the law regulates certain heterosexual and homosexual conduct (buggery, gross indecency) where the two partners are not married to each other and where one of the parties is under age 21, regardless of the person's consent to the sexual act.
4. *Private, Consensual Sex Between Two Adults.* Consensual sexual conduct in private between two persons, whether it be homosexual or heterosexual, has since 1969 been considered not the business of the criminal law, provided that the participants are either married to each other or are 21 or older.
5. *The Publication of Complainants' Identities.* Historically, the publication of the identities of sexual victims has not been viewed as a pressing concern by Canadian legislators. Some legal protection against identification was provided in 1976, but even this protection was arbitrarily limited to female victims of only four specific offences, leaving the victims of other sorts of offences with only the informal protective mechanisms of the courts, the media and the legal reporting services.
6. *The Testimony of Sexual Complainants and Children.* Although the truthfulness of sexual victims has come to be viewed with less scepticism by the law than formerly (an example being the gradual displacement of the requirement of "corroboration" of a sexual victim's testimony), the law continues to view the evidence of children generally (and hence of child sexual victims) with suspicion, and thus may make it more difficult to convict sexual assailants of children than to convict sexual assailants of adults.

7. *Abuses of Family or Social Trust.* Apart from a few references, the *Criminal Code* sexual offences have failed to recognize explicitly legal and social relationships which, when abused, may place the child or young person in continuing jeopardy, for example, the "common law" husband of a woman who has children from a previous marriage.
8. *Sentencing.* Due to the lack of *Criminal Code* sexual offences explicitly recognizing the many varieties of child sexual abuse, there is no coherent sentencing policy in the *Criminal Code* where child sexual abuse is found to occur. For example, consensual homosexual conduct (on a secluded public beach) between two 25 year-old males, and male homosexual conduct between a 35 year-old and a 14 year-old, are both instances of the offence of "gross indecency", notwithstanding the obvious qualitative differences between the two behaviours. Moreover, the 25 year-olds in the former instance and the 35 year-old in the latter instance are liable to the same maximum punishment, again, notwithstanding the widely different levels of blameworthiness in the respective circumstances.
9. *The Lack of a Child-Oriented Legal Framework.* Apart from the offences proscribing sexual intercourse with girls or young women in various contexts, Canadian criminal law has tended to use the legal framework applicable to sexual offences against adults in dealing with sexual offences against children. This approach is objectionable on two major grounds. First, it fails to appreciate that adult sexual abuse is, along a number of dimensions, different in kind from child sexual abuse, and consequently, that child sexual victims need a legal framework tailored to their special needs and vulnerabilities. Second, it further fails to appreciate that "child sexual abuse" is itself a multi-faceted phenomenon, and that it is both confusing and counter-productive to lump very different sorts of inappropriate sexual behaviours with children together into a few vague legal categories such as "gross indecency", "sexual assault" or "sexual exploitation".

In light of these considerations, it is evident that the Canadian criminal law of sexual offences up to January, 1983 evinced some deficiencies which detracted from the protection the law affords children and youths.

## Limitations of 1983 Amendments (Bill C-127)

On January 4, 1983, a new set of sexual offences and related provisions came into force in Canada and partially replaced the former legal framework. This development provides a case study concerning the extent to which the new sexual offences take into account the special problems in affording protection to children and youths.

The broad approach of the 1983 changes was the classification of non-consensual sexual acts as species of assaults and violence rather than as unacceptable forms of sexual gratification. Accordingly, the former offences of rape (which required proof of sexual intercourse), sexual intercourse with a feeble-minded female (which also required such proof), and indecent assault on a male or a female, were repealed. These offences were replaced by a three-tiered scheme of "sexual assault" offences, reviewed earlier in this chapter, which are



graded according to the nature of the additional circumstances which accompany the act. The term "sexual assault" was not defined, although it will likely be taken to mean either an assault<sup>251</sup> directed at a person's sexual organs, or an assault which, from the circumstances, is clearly sexually motivated.

In addition to re-classifying criminal sexual behaviour, the 1983 amendments introduced other important changes. The conditions under which the complainant's submission to or acquiescence in the sexual act will not be regarded as a valid legal consent to the act were broadened, although in somewhat vague terms.<sup>252</sup> The requirement of "corroboration" of a sexual assault victim's testimony is no longer required; this amendment may result in a greater number of prosecutions and convictions of sexual offenders. Where non-consensual sexual intercourse occurs between a husband and his wife, this is a form of sexual assault and can be prosecuted as such. Under the former law, a husband could not be convicted of raping his wife.<sup>253</sup> Moreover, the Crown can now compel the spouse of an accused sexual offender to testify in court for virtually all sexual crimes.

The new law also provides additional protection against identification of sexual victims in the media and restricts enquiries into a complainant's prior sexual conduct with persons other than the accused.

Notwithstanding these reforms, many of which will be helpful in the prosecution of sexual assaults against adults, in the Committee's judgment several of the changes introduced in 1983 are seriously deficient in relation to affording sufficient protection for children and youths who are victims of sexual offences. These deficiencies were born of the age-old practice of using a legal framework designed for adult sexual victims in purporting to deal with child sexual victims. Such a framework fails to deal adequately either with the peculiar vulnerabilities of children or with the very different reality of child as opposed to adult sexual abuse. Several examples suffice to demonstrate these deficiencies in relation to the child sexual victim.

1. Under the former law, the consent of a person under 14 to be touched sexually was not a defence for the accused. Under the changes introduced in 1983, however, the consent of a person under 14 to be touched sexually is a defence, provided that the older party is less than three years older than the complainant. Implicit in this amendment is the premise that consensual sexual activity between young persons who are relatively close in age should not be prohibited (provided that the act is other than that of sexual intercourse, since the prohibition against sexual intercourse with females under 14 remains in the *Criminal Code*). This was a major step which assumed, in an information vacuum, that this form of behaviour was not harmful to the younger person.<sup>254</sup>
2. The law traditionally has refused to recognize the consent of a person who willingly subjects himself or herself to physical harm (as a means of sexual gratification) at the hands of another. Remarkably, the 1983 amendments left this principle intact where the "victim" is an adult, but provided that, where the complainant was under 14 and the accused was less than three years older than the complainant, the complainant's consent to



such conduct was a good defence to the charge.<sup>255</sup> In the Committee's judgment, this was a serious legislative oversight.

3. As noted earlier, the 1983 amendments set out certain "aggravating" factors which will elevate a sexual assault into a more serious form of offence. These factors, for example, the use or threatened use of a weapon, the threatening of or causing of bodily harm to the complainant, gang attacks, or the wounding or maiming of the complainant, may be the most prevalent aggravating circumstances against *adult* sexual victims, but they are not particularly relevant to sexual assaults on children, as indicated by the Committee's research findings. Different "aggravating" factors come into play where the sexual victim is a child, for example, the very nature of the sexual act in which the child is compelled to engage, and the legal or social relationship between the child and his or her assailant.
4. Although the 1983 amendments removed the requirement of corroboration in sexual cases,<sup>256</sup> they did not reform the general legal principles which apply to children's evidence. Many sexual offences against children are committed in private places when the child is alone with the offender. Consequently, in prosecutions of sexual offences against children, the testimony of the child victim typically is crucial to proving that the offence was committed. Canadian law places serious fetters both on the opportunity of a child to testify in court at all, and on the legal effect of the child's testimony, if received. Here again, the 1983 amendments ignored the special needs of the child sexual victim.
5. Under the former law, the *Criminal Code* stated certain presumptions which made it easier to prove the offence of unlawful sexual intercourse with a girl 14 or 15. The 1983 amendments repealed these presumptions, which will make it more difficult to prove this offence. This can only be explained as a legislative oversight.
6. Although the 1983 amendments provided additional protection against the identification of sexual victims in the media, the victims of the offences of unlawful sexual intercourse with a female under 16 and of "indecent act" (which applies to the act of indecent exposure) did not receive such protection.<sup>257</sup>

Here again, the interests of child sexual victims were not dealt with in the 1983 changes to the *Criminal Code*. Further, such protection from identification as was provided extends neither to official court transcripts nor to the legal reporting services, a situation which is clearly documented by the Committee's research findings.

Other implications of the 1983 amendments are considered in the following chapters of this section of the Report.

## Criminal Law Reform Act, 1984 (Bill C-19)

Bill C-19 received its First Reading in Parliament on February 7, 1984. This Bill introduced several proposed amendments to the *Criminal Code* relating to a number of matters specified in the Committee's Terms of Reference.

## Consequential Amendment to Incest Offence

The Committee concurs that section 150(3) of the *Criminal Code* should be amended to provide greater protection to a victim of incest.<sup>258</sup> It has recommended that the sanction should not apply to a person who has sexual intercourse under restraint, duress or fear of the person with whom he or she has the sexual intercourse. **The Committee sharply rejects, however, the Bill's archaic proposal to continue to confine this protection to female victims and to provide that the court may give them a discharge only after a determination of their "guilt" and after being satisfied that they committed the offence by reason only of restraint, duress or fear. The Committee strongly believes that no victim of incest should have to suffer a determination of guilt in addition to the harm of the offence itself.**

## Obscenity

**The Committee endorses the Bill's clarification that the obscenity provisions of the *Criminal Code* may apply to "any matter or thing" and are not limited to printed publications.<sup>259</sup> The proposal to allow crime, horror, cruelty, violence or sex to constitute obscenity may prove useful in taking action against degrading representations of adult men and women.**

## Soliciting

As indicated in this Report, the Committee supports making the offence of soliciting applicable to prospective customers as well as to prostitutes, and defining "public place" to include a motor vehicle located in or on a public place.<sup>260</sup> **In addition, in order to deter persons who seek to use young prostitutes, the Committee has recommended amending the *Criminal Code* to provide for a separate offence of buying or trying to buy sexual acts with a person under 18 years-old.**

## Communicating Venereal Disease

**The Committee is in agreement with the Bill's proposal to repeal the offence of communicating a venereal disease.<sup>261</sup> In connection with the repeal of this offence, the Committee has recommended a number of initiatives to provide improved protection for children and youths from health risks associated with sexually transmitted diseases.**

## Restitution

In the Bill, "restitution" includes payment of money by the offender to the victim, as well as the restoration of property.<sup>262</sup> These reparations can include payment for special damages and loss of income or support incurred as a result



of bodily injury arising from an offence, as well as punitive damages. In its review of provincial criminal injuries compensation boards, the Committee concluded that it is essential that the physical and emotional pain and suffering experienced by the victims of sexual assault be explicitly recognized in the enabling legislation of each jurisdiction.

In light of the development of the provincial Boards to date as an important resource for assistance to victims of sexual assaults, the Committee believes that the primary emphasis should remain on publicizing services provided by existing provincial programs and on ensuring that they are adequately funded.

## Dangerous Offenders

The Bill completes the process of deleting reference to the sexual offences in the definition of "serious personal injury offence."<sup>263</sup> As pointed out in chapter 37, before the January, 1983 amendments an offence or attempt to commit an offence of rape, indecent assault on a female, indecent assault on a male, sexual intercourse with a female under 14 or 14 and 15, and gross indecency, were considered to be "serious personal injury offences." Prior to the proclamation of Part XXI of the *Criminal Code* in 1977, a conviction for the offences of or attempts to commit buggery and bestiality would ground dangerous sexual offender applications. Since the January, 1983 amendments, the only sexual offences mentioned in section 687(b), which defines "a serious personal injury offence", are the new sexual assault offences and attempts to commit them. The Bill defines serious personal injury offence in part as an offence "for which the offender may be sentenced to imprisonment for ten years or more." A number of major sexual offences do not meet this requirement. Whether the application proceeds under section 688(a) (pattern of repetitive behaviour) or under 688(b) (conduct in any sexual matter showing failure to control sexual impulses), it must be shown that there has been a conviction for "a serious personal injury offence".

A conviction for a sexual offence against a child provides a valuable indicator of serious criminal conduct. Reference to the sexual assaults in the definition of serious personal injury offence was deleted in the Bill in order to emphasize that with a few stated exceptions, *any* indictable offence involving violence or endangering life or safety is a "serious personal injury offence". However, the Committee has found that serious sexual offences against children more often involve threats or coercion than violence or danger to life or safety. Since the provisions in the Bill (like the present provisions in the *Criminal Code*) depend upon establishing a conviction for a serious personal injury offence, the Bill's provisions may provide less protection for children than is currently afforded by the *Criminal Code* provisions.

At present, an application can be made under either section 688(a) or 688(b). In the case of sexual offenders, it is usually made under the latter provision which requires, in addition to a serious personal injury offence, proof



that "the offender, by his conduct in an sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses . . .". The Bill would delete this provision, so that a future application could not be based on it. Section 688(a) provides an alternate basis for an application which requires, in addition to a serious personal injury offence, proof that "the offender constitutes a threat to the life, safety or *physical or mental well-being* of other persons on the basis of evidence establishing . . . a pattern of repetitive behaviour by the offender . . . showing . . . a likelihood of his inflicting severe psychological damage upon other persons . . . in the future." The comparable requirement under the Bill is proof that the offence "forms a part of a pattern of repetitive behaviour by the offender showing a . . . wanton and reckless disregard for the lives, safety or *physical well-being* of other persons." Even if an application under the dangerous offender provisions of the *Criminal Code* were successful, the Committee's findings indicate that unless the criterion of a threat to physical well-being is interpreted liberally, it is unlikely to be met in many cases involving convicted child sex offenders.

**In light of the Committee's recommendations concerning dangerous child sexual offenders, the Committee endorses the Bill's proposal to delete mention of the prediction of future behaviour from the dangerous offender legislation. However, several of the other proposed amendments would make the dangerous offender provisions of Bill C-19 less appropriate for providing effective protection in many cases of sexual offences against children since the Bill fails:**

- 1. To mention any sexual offences in its definition of "serious personal injury offence".**
- 2. To specify the conduct by which a sexual offender has disregard for children and youths who constitute the majority of victims.**
- 3. To indicate that the behaviour by the offender need not show a disregard for the lives, safety or physical well-being of children and youths who are the victims of sexual offences.**

**On the basis of its review, the Committee recommends that new legislation, separate from the dangerous offender provisions, and meeting the above requirements, should be enacted to provide added protection for children and youths against sexual offences. Failing this, in order to secure the necessary protection for children, the dangerous offender provisions should be amended to meet the above requirements.**

## **Constitutional Issues**

The sexual abuse and exploitation of children and the access by children to pornographic material are matters which fall within the legislative competence of both Parliament and the provincial legislatures, although in different respects. Parliament has legislative jurisdiction over criminal law and criminal

procedure; the federal *Criminal Code*, in addition to prescribing the rules of procedure in criminal proceedings, contains several offences directed at child sexual abuse, prostitution<sup>264</sup> and obscene publications.<sup>265</sup> The federal *Young Offenders Act* outlines the principles and procedures which apply where a federal offence (for example, sexual assault) is committed by a person under the age of 18. The rules of evidence with respect to proceedings under either of these enactments are also governed by federal law. Further, Parliament has legislative jurisdiction over the establishment, maintenance and management of penitentiaries, and is responsible for providing correctional services (including a mechanism for parole) for offenders who receive a sentence of (or sentences totalling) two or more years of imprisonment.

The legislative jurisdiction of the 10 provincial legislatures and the two territorial councils<sup>266</sup> is also relevant to the Committee's mandate. Each province is responsible for the administration of justice within its borders, including the management of police forces, the prosecution of alleged offenders, the organization of criminal and family courts and the provision of correctional services for offenders who receive a sentence of (or sentences totalling) less than two years' imprisonment. The provinces also have jurisdiction to enact laws concerning child welfare and related matters and to authorize both legal intervention into the family and consequent sanctions where minimum standards of child care are violated. Proceedings under these laws are governed by rules of procedure and evidence enacted at the provincial level. With respect to the issue of access by children to pornographic material, the provinces have jurisdiction to regulate the manner of distribution and sale of publications disseminated within their borders<sup>267</sup> and also to regulate, by way of censorship, classification or other means, the public exhibition of films.<sup>268</sup>

The legal regulation of those matters falling within the Committee's mandate is in some respects a federal, and in other respects, a provincial, responsibility. Until fairly recently in Canada,<sup>269</sup> the important constitutional question has been, not whether a particular law could validly be enacted, but rather which level of government could enact it. With the passage of the Canadian *Charter of Rights and Freedoms*, however, more far-reaching constitutional issues are joined. The *Charter* is binding on all levels of government and guarantees the enjoyment of certain basic rights and freedoms "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The *Charter* now constitutes part of the supreme law of Canada. Any law that is inconsistent with its provisions is, to the extent of the inconsistency, of no force or effect. Accordingly, the interpretation by Canadian courts of these broad constitutional prescriptions will have an important impact on matters within the Committee's mandate.

## References

### Chapter 12: The Sexual Offences

- <sup>1</sup> An example of an obsolete offence is section 154 of the *Criminal Code* which prohibits the seduction of female passengers by male owners or masters of vessels. This offence is a vestige of nineteenth-century immigration legislation enacted to protect women coming to Canada as immigrants (see, *An Act to Amend the Immigration Act, 1869*, S.C. 1872, c. 28, s. 11), which was incorporated into the 1892 *Criminal Code* (*The Criminal Code*, S.C. 1892, c. 29, s. 184). The repeal of former section 139 of the Code in January, 1983 removed the requirement for corroboration, as well as the defence of subsequent marriage to the female passenger.
- <sup>2</sup> See Consent, in this chapter.
- <sup>3</sup> *Pappajohn v. The Queen* (1980), 52 C.C.C. (2d) 481 (S.C.C.).
- <sup>4</sup> *Cr. Code*, s. 144.
- <sup>5</sup> *Cr. Code*, s. 145.
- <sup>6</sup> Blackstone, 4 *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769), Book 4 at 210.
- <sup>7</sup> See *Russell on Crime* (12th ed. London: Stevens & Sons, 1964) vol. 1 at 706-707.
- <sup>8</sup> *An Act relating to treasons and felonies*, 1758, 32 Geo. 2, c. 13, s. 7 (Nova Scotia).
- <sup>9</sup> *Crimes and Misdemeanors: Of Offences Against the Person*, R.S.N.S. 1864 (3rd Series), c. 164, s. 13.
- <sup>10</sup> *An act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 16 (Prov. of Can.).
- <sup>11</sup> *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, s. 7.
- <sup>12</sup> *An Act relating to the punishment of certain cases of felony and misdemeanor*, Rev. Acts of P.E.I. 1861, c. 28, s. 2.
- <sup>13</sup> *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 49.
- <sup>14</sup> *An Act to amend the Act respecting offences against the person*, S.C. 1873, c. 50, s. 1.
- <sup>15</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 266.
- <sup>16</sup> *Ibid.*, s. 266(2).
- <sup>17</sup> *An Act to amend the Criminal Code*, S.C. 1921, c. 25, s. 4.
- <sup>18</sup> *Martin's Criminal Code*, 1955 (Toronto: Cartwright & Sons, 1955) at 233.
- <sup>19</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 136.
- <sup>20</sup> *R. v. McCathern* (1927), 48 C.C.C. 54 (Ont. C.A.).
- <sup>21</sup> *Ibid.*
- <sup>22</sup> *Criminal Law Amendment Act*, 1972, S.C. 1972, c. 13, s. 70.
- <sup>23</sup> See, e.g., *R. v. Ellerton* (1927), 49 C.C.C. 94 (Sask. C.A.); *R. v. Galsky* (1930), 54 C.C.C. 199 (Man. C.A.); *R. v. Lovering* (1948), 92 C.C.C. 65 (Ont. C.A.); and *R. v. Thomas* (1951), 100 C.C.C. 112 (Ont. C.A.).
- <sup>24</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 134.
- <sup>25</sup> See, e.g., *R. v. Camp* (1977), 36 C.C.C. (2d) 511 (Ont. C.A.); *R. v. Firkins* (1977), 37 C.C.C. (2d) 227 (B.C.C.A.), leave to appeal to S.C.C. refused 37 C.C.C. (2d) 227n; *R. v. Daigle* (1977), 37 C.C.C. (2d) 386 (N.B.C.A.); and *R. v. Riley* (1978), 42 C.C.C. (2d) 437 (Ont. C.A.).
- <sup>26</sup> See *Cr. Code*, s. 586 and *Canada Evidence Act*, R.S.C. 1970, c. E-10, as am., s. 16(2).



- <sup>27</sup> *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.
- <sup>28</sup> *Ibid.*
- <sup>29</sup> (1980), 53 C.C.C. (2d) 225 (S.C.C.).
- <sup>30</sup> See, e.g., the remarkable fact situation in *R. v. Konkin* (1983), 3 C.C.C. (3d) 289 (S.C.C.).
- <sup>31</sup> *Supra*, note 29 at 232.
- <sup>32</sup> *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 44.
- <sup>33</sup> *Cr. Code*, s. 246.1, enacted by S.C. 1980-81-82, c. 125, s. 19.
- <sup>34</sup> An "assault" is defined in s. 244 of the *Cr. Code*.
- <sup>35</sup> See, e.g., *R. v. Rolfe* (1952), 36 Cr. App. R. 4 (C.C.A.).
- <sup>36</sup> *Cr. Code*, s. 245.1 (2), enacted by S.C. 1980-81-82, c. 125, s. 19.
- <sup>37</sup> Smith and Hogan, *Criminal Law* (London: Butterworths, 1979) at 356. See also Mewett and Manning, *Criminal Law* (Toronto Butterworths, 1978) at 471 ff.
- <sup>38</sup> [1934] 2 K.B. 498 (C.C.A.).
- <sup>39</sup> *R. v. Cullen* (1948), 93 C.C.C. 1 (Ont. C.A.).
- <sup>40</sup> *Cullen v. The King* [1949] 3 D.L.R. 241 (S.C.C.).
- <sup>41</sup> *R. v. Abraham* (1974), 30 C.C.C. (2d) 332 (Que. C.A.).
- <sup>42</sup> *Cr. Code*, s. 246.1(2).
- <sup>43</sup> *Cr. Code*, s. 140.
- <sup>44</sup> [1951] 2 All E.R. 834 (K.B.D.).
- <sup>45</sup> *Ibid.*, at 834.
- <sup>46</sup> The obvious problems posed by the English decisions of *Fairclough v. Whipp*; *R. v. Burrows* (1951), 35 Cr. App. R. 180 (C.C.A.); and *D.P.P. v. Rogers* (1953), 37 Cr. App. R. 137 (D.C.) were addressed in the *Indecency with Children Act, 1960*, c. 33 (U.K.).
- <sup>47</sup> [1970] 2 C.C.C. 366 (P.E.I.S.C.).
- <sup>48</sup> See also *R. v. Baney*, [1972] 2 O.R. 34 (C.A.).
- <sup>49</sup> See generally Gold, *Assaults, Invitations and Attempted Assaults* (1972), 17 C.R.N.S. 266, in which the author reviews the difficulties posed by English and Canadian judicial decisions in this area.
- <sup>50</sup> *An Act respecting Offences against the Person*, S.C. 1869, c. 20, s. 53.
- <sup>51</sup> *An act to consolidate and amend the Statute Law of England and Ireland relating to offences against the person*, 1861, 24-25 Vict., c. 100, s. 52 (U.K.).
- <sup>52</sup> *An Act respecting offences against the person*, R.S.C. 1886, c. 162, s. 41.
- <sup>53</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37.
- <sup>54</sup> *Ibid.*, ss. 40, 41.
- <sup>55</sup> *Ibid.*, s. 13(1).
- <sup>56</sup> *R. v. Brasier* (1779), 1 Leach 199; 168 E.R. 202.
- <sup>57</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 13(2).
- <sup>58</sup> *Ibid.*, s. 7.
- <sup>59</sup> *Ibid.*, s. 3.
- <sup>60</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 259(b).
- <sup>61</sup> *Cullen v. The King* (1949), 94 C.C.C. 337 (S.C.C.).
- <sup>62</sup> See, e.g., *R. v. Yates* (1946), 85 C.C.C. 334 (B.C.C.A.); and *R. v. McBean* (1953), 107 C.C.C. 28 (B.C.C.A.).
- <sup>63</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 134.
- <sup>64</sup> *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.
- <sup>65</sup> *Cr. Code*, s. 246.4. The prohibition also applies to the offences of incest and gross indecency.
- <sup>66</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 141.
- <sup>67</sup> *Criminal Law Amendment Act 1972*, S.C. 1972, c. 13, s. 70.
- <sup>68</sup> *Cr. Code*, s. 155. See also s. 158.

- <sup>69</sup> *An Act for better proportioning the punishment to the offences in certain cases, and for other purposes therein mentioned*, 1842, 6 Vict., c. 5, s. 5 (Prov. of Can.).
- <sup>70</sup> *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 64.
- <sup>71</sup> *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 2.
- <sup>72</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 7.
- <sup>73</sup> *Ibid.*, s. 3.
- <sup>74</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 260.
- <sup>75</sup> *Criminal Law Amendment Act*, 1972, S.C. 1972, c. 13, s. 70.
- <sup>76</sup> *Cr. Code*, s. 155.
- <sup>77</sup> See *R. v. Jacobs* (1817), Russ. & Ry. 331, 168 E.R. 830.
- <sup>78</sup> See *R. v. Wishart* (1954), 20 C.R. 163 (B.C.C.A.). The most recent reported case involving bestiality is *R. v. Triller* (1980) 55 C.C.C. (2d) 411 (B.C. Co. Ct.), in which the accused attempted to have intercourse with a male dog.
- <sup>79</sup> *Criminal Law Amendment Act, 1968-69*, S.C. 1968-69, c. 38, s. 7.
- <sup>80</sup> "Public place" is expressed in s. 138 of the *Cr. Code* as including "any place to which the public have access as of right or by invitation, express or implied."
- <sup>81</sup> See *Cr. Code*, s. 158 (2)(b).
- <sup>82</sup> *Leviticus*, 18: 22, 23.
- <sup>83</sup> Blackstone, *Commentaries on the Laws of England*, (1st ed. Oxford: Clarendon Press, 1769), Book 4 at 215-16.
- <sup>84</sup> *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, s. 10.
- <sup>85</sup> *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 15 (Prov. of Can.); *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 22.
- <sup>86</sup> *Of offences against the person*, R.S.N.S. 1864, c. 164, s. 16.
- <sup>87</sup> *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 63.
- <sup>88</sup> *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 1.
- <sup>89</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 174.
- <sup>90</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 147.
- <sup>91</sup> *Cr. Code*, ss. 150(1) and 150(4).
- <sup>92</sup> *Cr. Code*, s. 150(3).
- <sup>93</sup> *Cr. Code*, s. 150(2).
- <sup>94</sup> *Punishment of Incest Act*, 1908, 8 Edw. 7, c. 45 (U.K.).
- <sup>95</sup> Hogan, "On Modernising the Law of Sexual Offences", in P.R. Glazebrook, (ed.) *Reshaping the Criminal Law* (London: Stevens & Sons, 1978) at 187-88.
- <sup>96</sup> *Of offences against public morals and decency*, R.S.N.B. 1854, c. 145, s. 2.
- <sup>97</sup> *An Act relating to the punishment of certain cases of felony and misdemeanor*, Rev. Acts P.E.I. 1861, c. 27, s. 3.
- <sup>98</sup> *Of offences against public morals*, R.S.N.S. 1864, c. 160, s. 2.
- <sup>99</sup> In *R. v. Halifax Tramway Co.* (1898), 1 C.C.C. 424 (N.S.C.A.), it was held that the authority to repeal provincial legislation in an area that had passed to the federal government was, as a result of Confederation in 1867, vested in the federal Parliament.
- <sup>100</sup> Taschereau, *The Criminal Code of Canada, 1893* (3rd ed. Toronto: Carswell, 1893) at 119-20.
- <sup>101</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 8.
- <sup>102</sup> *Ibid.*
- <sup>103</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 176.
- <sup>104</sup> *An Act to amend the Criminal Code*, S.C. 1934, c. 47, s. 6.
- <sup>105</sup> *Martin's Criminal Code*, 1955, *supra*, note 18 at 238.
- <sup>106</sup> *Bergeron v. The King* (1930), 56 C.C.C. 62 (Que. K.B.).

- <sup>107</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 131(1).
- <sup>108</sup> *Can. H. of C. Deb.*, Feb. 12, 1954, at 2037, and Apr. 1, 1954 at 3560.
- <sup>109</sup> *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82, c. 125, s. 5.
- <sup>110</sup> *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.
- <sup>111</sup> A child born out of wedlock is not a “step-daughter”, since to be a man’s “step-daughter” the child must be a product of his wife’s previous marriage: *R. v. Groening* (1953), 16 C.R. 389 (Man. C.A.).
- <sup>112</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 4.
- <sup>113</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 183.
- <sup>114</sup> *The Criminal Code Amendment Act*, S.C. 1900, c. 46, s. 3 (re: s. 186A).
- <sup>115</sup> *An Act to amend the Criminal Code and the Canada Evidence Act*, S.C. 1917, c. 14, s. 2.
- <sup>116</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 145.
- <sup>117</sup> *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82, c. 125, s. 5.
- <sup>118</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 4.
- <sup>119</sup> *The Criminal Code*, S.C. 1892, c. 37, s. 183.
- <sup>120</sup> *Ibid.*, s. 184(2).
- <sup>121</sup> *An Act further to amend the Criminal Code, 1892*, S.C. 1900, c. 46, s. 3 (re: s. 183A).
- <sup>122</sup> *An Act to amend the Criminal Code*, S.C. 1920, c. 43, s. 5.
- <sup>123</sup> *Ibid.*, s. 17.
- <sup>124</sup> *Ibid.*, s. 5.
- <sup>125</sup> *An Act to amend the Criminal Code*, S.C. 1959, c. 41, s. 10. See generally *R. v. Wiberg* (1955), 113 C.C.C. 257 (Alta. C.A.).
- <sup>126</sup> *Cr. Code*, s. 140.
- <sup>127</sup> *Cr. Code*, s. 146(3).
- <sup>128</sup> The charge of rape was available where the sexual intercourse was perpetrated without the female’s consent.
- <sup>129</sup> *An act relating to treasons and felonies*, 1758, 32 Geo. 2, c. 13, s. 8 (Nova Scotia).
- <sup>130</sup> *Of offences against the person*, R.S.N.S. 1864 (3d ser.), c. 164, s. 14.
- <sup>131</sup> *Ibid.*, s. 15.
- <sup>132</sup> *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 17 (Prov. of Can.). See also *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 20.
- <sup>133</sup> *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 17 (Prov. of Can.). See also *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 21.
- <sup>134</sup> *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, ss. 8, 9.
- <sup>135</sup> *Constitution Act, 1867*, 30-31 Vict., c. 3, s. 91, para. 27. The *Constitution Act*, 1982 changes the name of the *British North America Act, 1867* to the *Constitution Act, 1867*.
- <sup>136</sup> *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 51.
- <sup>137</sup> *Ibid.*, s. 52.
- <sup>138</sup> *Ibid.*, s. 53.
- <sup>139</sup> *An Act to amend the Act respecting offences against the person*, S.C. 1877, c. 28, s. 2.
- <sup>140</sup> *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1(1).
- <sup>141</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.
- <sup>142</sup> *Ibid.*, s. 12. The intent of this amendment was to “give us a more stringent rule than is found in our present statutes”. See *Can. H. of C. Deb.*, Apr. 10, 1890, col. 3161.
- <sup>143</sup> *The Criminal Code*, S.C. 1892, c. 29.
- <sup>144</sup> *Ibid.*, s. 181.



- <sup>145</sup> *An Act to amend the Criminal Code*, 1892, S.C. 1893, c. 32.
- <sup>146</sup> In the parliamentary debates on this amendment, it was explained that "Under the section as it stands now, mere illicit connection with a child between the ages of fourteen and sixteen years would not be an offence. There must be the element of seduction, and the object of the amendment to make that element unnecessary. In future, the element is not necessary to constitute the offence". See *Can. H. of C. Deb.*, Mar. 22, 1893, col. 2802.
- <sup>147</sup> *An Act to amend the Criminal Code*, S.C. 1920, c. 43, ss.4, 17.
- <sup>148</sup> *An Act to amend the Criminal Code*, S.C. 1959, c. 41, s. 9.
- <sup>149</sup> See *R. v. Wiberg* (1955), 113 C.C.C. 257 (Alta. C.A.).
- <sup>150</sup> *An Act to amend the Criminal Code*, S.C. 1934, c. 47, s. 9.
- <sup>151</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 131(3).
- <sup>152</sup> *Martin's Criminal Code*, 1955, *supra*, note 18 at 228.
- <sup>153</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 134.
- <sup>154</sup> *Criminal Law Amendment Act*, 1975, S.C. 1974-75-76, c. 93, s. 8.
- <sup>155</sup> See the *Criminal Code*, R.S.C. 1970, c. C-34, *as am.*, s. 586; *Canada Evidence Act*, R.S.C. 1970, c. E-10, *as am.*, s. 16(2).
- <sup>156</sup> *Criminal Law Amendment Act*, 1972, S.C. 1972, c. 13, s. 70.
- <sup>157</sup> *Cr. Code*, s. 2.
- <sup>158</sup> See *R. v. Probe* (1943), 79 C.C.C. 289 (Sask. C.A.); and *R. v. Red Old Man* (1978), 44 C.C.C. (2d) 123 (Alta. Dist. Ct.).
- <sup>159</sup> Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 423.
- <sup>160</sup> *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1.
- <sup>161</sup> *Criminal Law Amendment Act*, 1885, 48-49 Vict., c. 69, s. 5(2) (U.K.).
- <sup>162</sup> S.C. 1886, c. 52, s. 1.
- <sup>163</sup> *An Act to amend the Act respecting offences against Public Morals and Public Convenience*, S.C. 1887, c. 48, s. 1.
- <sup>164</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 189.
- <sup>165</sup> *The Criminal Code Amendment Act*, S.C. 1900, c. 46, s. 3.
- <sup>166</sup> *Criminal Code*, R.S.C. 1927, c. 36, s. 219.
- <sup>167</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 140.
- <sup>168</sup> The main reason for this amendment was the judgment of the Saskatchewan Court of Appeal in *R. v. Probe* (1943), 79 C.C.C. 289.
- <sup>169</sup> Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 422.
- <sup>170</sup> *R. v. Gasselle* (1934), 62 C.C.C. 295 at 297 *per* MacKenzie J.A. (Sask. C.A.).
- <sup>171</sup> *R. v. Schemmer*, [1927] 3 W.W.R. 417 (Sask. Dist. Ct.); *R. v. Blanchard* (1941), 75 C.C.C. 279 (B.C.C.A.). See also *R. v. Zambapys* (1923), 32 B.C.R. 510 (C.A.).
- <sup>172</sup> *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1.
- <sup>173</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.
- <sup>174</sup> *An Act to amend the Criminal Code*, S.C. 1920, c. 43, ss. 4, 17.
- <sup>175</sup> *Ibid.*
- <sup>176</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 143.
- <sup>177</sup> *Martin's Criminal Code*, 1955, *supra* note 18 at 239.
- <sup>178</sup> *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 2.
- <sup>179</sup> See especially *R. v. Comeau* (1912), 19 C.C.C. 350 at 357 *per* Graham E.J. (N.S.C.A.).
- <sup>180</sup> *Martin's Criminal Code*, 1955, *supra*, note 18 at 240.
- <sup>181</sup> *An Act to amend the Act respecting Offences against Public Morals and Public Convenience*, S.C. 1887, c. 48, s. 2. See *Can. H. of C. Deb.*, May 5, 1887, at 278.
- <sup>182</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 184(2).

- <sup>183</sup> *An Act respecting Offences against the person*, S.C. 1869, c. 20, s. 50.
- <sup>184</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 9.
- <sup>185</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 684.
- <sup>186</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 5.
- <sup>187</sup> *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 11 (U.K.).
- <sup>188</sup> See, e.g., *R. v. Jacobs*, *supra*, note 77; *R. v. Wollaston* (1872), 12 Cox C.C. 180 (C.C.A.); and *R. v. Rowed* (1842), 3 Q.B. 180.
- <sup>189</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 178.
- <sup>190</sup> See *Can. H. of C. Deb.*, Apr. 10, 1890, Cols. 3161, 3162, 3170; and Gigeroff, *Sexual Deviations in the Criminal Law* (Toronto: University of Toronto Press, 1968) at 46-50.
- <sup>191</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 149.
- <sup>192</sup> *Cr. Code*, s. 246.4.
- <sup>193</sup> *Cr. Code*, s. 138.
- <sup>194</sup> Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 435.
- <sup>195</sup> *Cr. Code*, s. 722.
- <sup>196</sup> *R. v. Sidley* (1663), 1 Sid. 168 (K.B.). See generally Smith and Hogan, *Criminal Law* (4th ed. London: Butterworths, 1978) at 436-38.
- <sup>197</sup> *An Act for consolidating into one Act and amending the Laws relating to idle and disorderly persons, Rogues and Vagabonds, incorrigible Rogues and other Vagrants in England*, 1822, 3 Geo. 4, c. 40, s. 3.
- <sup>198</sup> *An Act respecting Vagrants*, S.C. 1869, c. 28, s. 1. Emphasis added.
- <sup>199</sup> *An Act to amend "An Act respecting Vagrants"*, S.C. 1874, c. 43, s. 1.
- <sup>200</sup> *An Act to remove doubts as to the power to imprison with hard labour under the Acts respecting Vagrants*, S.C. 1881, c. 31, s. 1.
- <sup>201</sup> *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 8.
- <sup>202</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 6.
- <sup>203</sup> See Gigeroff, *Sexual Deviations in the Criminal Law* (Toronto: University of Toronto Press, 1968) at 52.
- <sup>204</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 177.
- <sup>205</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 130.
- <sup>206</sup> Gigeroff, *supra*, note 203, at 57.
- <sup>207</sup> *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3.
- <sup>208</sup> *The Young Offenders Act*, S.C. 1980-81-82, c. 110, proclaimed in April, 1984.
- <sup>209</sup> *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 2(1), emphasis added.
- <sup>210</sup> *The Juvenile Delinquents Act, 1908*, S.C. 1908, c. 40.
- <sup>211</sup> *Ibid.*, s. 29.
- <sup>212</sup> *An Act to amend the Juvenile Delinquents Act, 1908*, S.C. 1924, c. 53, s. 4.
- <sup>213</sup> *An Act to amend the Juvenile Delinquents Act, 1929*, S.C. 1936, c. 40, s. 2.
- <sup>214</sup> See, e.g., *R. v. Taylor* (1980), 55 C.C.C. (2d) 468 (P.E.I.S.C.).
- <sup>215</sup> *R. v. Haig* (1970), 1 C.C.C. (2d) 299 at 303, *per* Hartt J. (Ont. C.A.).
- <sup>216</sup> *Young Offenders Act*, S.C. 1980-81-82, c. 110, proclaimed in April, 1984.
- <sup>217</sup> *Ibid.*, s. 3.
- <sup>218</sup> *Cr. Code*, s. 168(2).
- <sup>219</sup> *Cr. Code*, s. 168(4).
- <sup>220</sup> *An Act to amend the Criminal Code*, S.C. 1918, c. 16, s. 1.
- <sup>221</sup> *An Act to amend the Criminal Code*, S.C. 1932-33, c. 53, s. 3.
- <sup>222</sup> *R. v. Vahey* (1931), 57 C.C.C. 378 (Ont. C.A.).
- <sup>223</sup> *An Act to amend the Criminal Code*, S.C. 1935, c. 36, s. 1.
- <sup>224</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 157.

- <sup>225</sup> *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 6 (U.K.). See generally *R. v. Webster* (1885), 16 Q.B.D. 134.
- <sup>226</sup> *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 4.
- <sup>227</sup> *Ibid.*
- <sup>228</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.
- <sup>229</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 187.
- <sup>230</sup> *An Act further to amend the Criminal Code*, 1892, S.C. 1900, c. 46, s. 3.
- <sup>231</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 156.
- <sup>232</sup> *The Criminal Code*, S.C. 1892, c. 29, s. 684.
- <sup>233</sup> *Criminal Code*, S.C. 1953-54, c. 51, s. 131.
- <sup>234</sup> *Martin's Criminal Code*, 1955, *supra*, note 18 at 228. See also *R. v. Sam Sing* (1910), 17 C.C.C. 361 (Ont. C.A.).
- <sup>235</sup> *Cr. Code*, s. 175(2).
- <sup>236</sup> *An Act to amend the Criminal Code*, S.C. 1951, c. 47, s. 13.
- <sup>237</sup> For an account of the problems that have arisen in England in charging an offence of this kind, see *R. v. Courtie* and commentary, [1983] *Criminal Law Review* 634, at 634-635.
- <sup>238</sup> The wider principle is that a young person may give a valid consent which is usually a defence where a person is charged with an offence under the *Criminal Code* that requires the absence of consent: Starkman, *The Control of Life: Unexamined Law and the Life Worth Living* (1973), 11 *Osgoode Hall Law Journal* 175, note 17 at 179, cited in *Report of the Committee on the Operation of the Abortion Law* (Ottawa: Supply and Services Canada, 1977) at 237.
- <sup>239</sup> *Criminal Law Amendment Act, 1880*, 43-44 Vict., c. 45, s. 2 (U.K.).
- <sup>240</sup> See *R. v. Johnson* (1865), 10 Cox C.C. 114, at 115 (C.C.A.).
- <sup>241</sup> Burbidge, *Digest of the Criminal Law of Canada* (Toronto: Carswell, 1890) at 242. The author was Judge of the Exchequer Court of Canada and a former Deputy Minister of Justice.
- <sup>242</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 7.
- <sup>243</sup> Of course, even at 14 a girl "might . . . be ignorant of the nature of the act [of sexual intercourse] . . . and of its possible consequences": *R. v. Case* (1850), 1 Den. 580, 169 E.R. 381 at 382, per Wilde C.J.
- <sup>244</sup> "R. v. Mehegan, 7 Cox, 145; R. v. Johnson, L. & C. 632, and that class of cases are not now law; see R. v. Brice, 7 Man. L.R. 627": Taschereau, *supra*, note 100 at 253.
- <sup>245</sup> *Supra*, note 38.
- <sup>246</sup> See Burbidge, *supra*, note 241, at 250, note 7.
- <sup>247</sup> See *R. v. Day* (1841), 9 Car. & P. 722, 173 E.R. 1026 (fear); *R. v. Case*, *supra*, note 243 (fraud); *R. v. Nichol* (1807), Russ. & Ry. 131, 168 E.R. 720 (exercise of authority).
- <sup>248</sup> See *R. v. Banks* (1838), 8 Car. & P. 575, 173 E.R. 624; *R. v. Meredith* (1838), 8 Car. & P. 587, 173 E.R. 630; *R. v. Martin* (1839), 9 Car. & P. 213, 173 E.R. 807; *R. v. Read* (1849), 3 Cox C.C. 266; *R. v. Cockburn* (1849), 3 Cox C.C. 543; *R. v. Johnson*, *supra*, note 240; *R. v. Lock* (1872), L.R. 2 C.C.R. 10.
- <sup>249</sup> In *R. v. Cockburn*, *supra*, note 248, the victim was a girl under 5. Her genitals had been injured, and the counsel for the prosecution suggested that the accused might be convicted of an assault, as the consent of the child could not be presumed by reason of her tender age. The reply of the judge shows why care must be taken to ensure that provisions regarding consent are specific in order to provide protection for children. Patteson, J. — "No; that is a mistake of the law. My experience has shown me that children of very tender age may have vicious propensities. A child under ten years of age cannot give consent to any criminal intercourse, so as to deprive that intercourse of criminality, but she can give such consent as to render the attempt no assault." The prisoner was directed to be acquitted.
- <sup>250</sup> See *R. v. Read*, *supra*, note 248, for an example of this in the case law.
- <sup>251</sup> The new definition of "assault" in section 244(1) of the *Criminal Code* is for the most part the same as under the old law. Sub-section (2) makes it applicable to the sexual assault offences.
- <sup>252</sup> *Criminal Code*, R.S.C. 1970, c. C-34, s. 244(3), as amended by S.C. 1980-81-82, c. 125, s. 19.
- <sup>253</sup> A husband could, however, be convicted of being a "party" to the rape of his wife.



- <sup>254</sup> The nature of the sexual behaviour engaged in between persons in these age groups and which come to police attention is described later in this Report.
- <sup>255</sup> *Criminal Code*, R.S.C. 1970, c. C-34, s. 246.1(2), as amended by S.C. 1980-81-82, c. 125, s. 19.
- <sup>256</sup> *Criminal Code*, R.S.C. 1970, c. C-34, s. 246.4, as amended by S.C. 1980-81-82, c. 135, ss. 5, 19.
- <sup>257</sup> *Criminal Code*, R.S.C. 1970, c. C-34, s. 442(3), as amended by S.C. 1980-81-82, c. 125, s. 25.
- <sup>258</sup> *Criminal Law Reform Bill, 1984* (Bill C-19), clause 35.
- <sup>259</sup> *Ibid.*, clause 36.
- <sup>260</sup> *Ibid.*, clause 48.
- <sup>261</sup> *Ibid.*, clause 58.
- <sup>262</sup> *Ibid.*, clause 206.
- <sup>263</sup> *Ibid.*, clauses 209, 210, 214.
- <sup>264</sup> The legal control of prostitution is a matter within the criminal law jurisdiction of the federal Parliament, and the provinces may not enable municipalities to regulate prostitution per se by passing municipal by-laws: *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).
- <sup>265</sup> Obscene or otherwise unacceptable literary or visual depictions are regulated at the federal level by offences in the *Criminal Code*, as well as by provisions in legislation dealing with customs, importation, and the use of the mails. Parliament also has jurisdiction to regulate the content of radio, television, cable television, and "Pay T.V.", and does so through the Canadian Radio-Television and Telecommunications Commission (C.R.T.C.).
- <sup>266</sup> Parliament has granted extensive powers of self-government to the two federal territories. The *Northwest Territories Act* and the *Yukon Act* establish a Council to make "ordinances" for the government of its territory in relation to a long list of subjects corresponding roughly to the list of subjects allocated to the provincial legislatures by s.92 of the *Constitution Act, 1867* (formerly the *B.N.A. Act, 1867*): Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 216.
- <sup>267</sup> See Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 345. Where, however, a municipal by-law seeks to restrict the accessibility to young persons of "erotic" magazines, it is not sufficient for the municipality merely to purport to regulate magazines "appealing to or designed to appeal to erotic or sexual appetites or inclinations". See *Re Hamilton Independent Variety and Confectionery Stores Inc. and City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).
- <sup>268</sup> The censorship of films by provincial theatre branches is bound to raise important issues of freedom of speech and of expression under the *Charter of Rights and Freedoms*. The first such test has been the Supreme Court of Ontario decision in *Re Ontario Film and Video Appreciation Society and Ontario Board of Censors*, March 25, 1983. The Divisional Court quashed decisions of the Ontario Censor Board prohibiting the public exhibition of certain films, for the reason that the criteria employed by the Board in so-acting had no legal status and therefore were not "prescribed by law" in accordance with Section 1 of the *Charter*.
- <sup>269</sup> The *Canadian Bill of Rights*, R.S.C. 1970, Appendix III (which applies only to laws enacted at the federal level) was passed in 1960. Before 1960, the "checks" on law-makers at the federal or provincial levels were the constraints imposed by the division of legislative powers between them. See generally Tarnopolsky, *The Canadian Bill of Rights from Diefenbaker to Drybones* (1971), 17 McGill L.J. 437.



## Chapter 13

# Historical Statistical Trends

Crime statistics compiled over the years do not, in themselves, answer the question whether more or fewer sexual offences against children are being committed now than in the past. They do, however, provide an historical perspective against which current enforcement and judicial practices concerning these offences can be compared.

The statistics for the period between 1876 and 1973 on charges laid and convictions for sexual offences indicate that there have been significant changes in: the rates of charges laid; the ratio of convictions to charges; the types and lengths of sentences; conviction rates among different provinces; and the rates of charges and convictions for specific types of sexual offences in which children were victims. The results given in this chapter summarize a more detailed review prepared for the Committee by the Research and Analysis Division of Statistics Canada. They complement the preceding historical review of sexual offences in Canadian law.

## Limitations of Historical Criminal Statistics

The compilation of information on charges and convictions from the majority of Canadian courts (with the exception of Alberta, Saskatchewan, Newfoundland and the Yukon) was mandated by the *Criminal Statistics Act* of 1876. In the early years, this information was assembled by the Minister of Agriculture. From 1917 until the termination of the publication of national court statistics in 1973, the responsibility for issuing these reports lay with Statistics Canada. The submission by the courts of statistical reports on their previous year's proceedings was provided initially on a voluntary basis. Since this system was based on voluntary reporting and since there is no way to check the completeness and reliability of the courts' submissions, the accuracy of these statistics is debatable.

In reviewing crime committed against children and youths, a serious limitation of official statistics, both those now being assembled and those compiled in the past, is that no information is provided on the ages of the victims. In the research undertaken by the Committee in co-operation with police forces



across Canada, it was found that the general occurrence records maintained on cases investigated by the police typically contained detailed information about victims, suspects and the criminal acts committed. However, in the assembling of information on crimes reported to authorities across Canada, the emphasis has been to list findings for suspects and for persons who were charged or convicted.

None of the information that is usually available in police records about victims is drawn upon in the aggregation of national and provincial criminal statistics. **For the purposes of official crime statistics, now and in the past, the young victims of criminal offences are invisible. Consequently, it is not known what proportion of all offences reported to the authorities is committed against children and youths. It is often assumed that most victims of sexual offences, both against children and against adults, are females. Even this assumption, however, cannot be documented by resorting to official criminal statistics for the nation.**

**In the Committee's judgment, steps should be taken to assemble and publish on a regular basis information that specifies the age and sex of the victims of different offences, including sexual offences. Having this type of information available would provide much needed documentation of the extent to which children and youths are the victims of different types of sexual offences known to the authorities, and could serve as a basis for considering more effective means for their protection.**

In addition to the absence of information about victims in official crime statistics, there are a number of other limitations in these sources which preclude their more extensive use in the analysis of the reported occurrence of sexual offences. These limitations include:

- *Unit of Analysis:* There have been shifts in the unit of analysis from counts of *persons* who were charged, to the number of *charges* that were laid against persons. Between 1876-1894, the unit of analysis was the number of persons charged; between 1895-1922, the unit was changed to count the charges that were laid; and between 1923-1925, the unit of analysis reverted to information on persons charged.
- *Amendments to Legislation:* Corresponding to changes in legislation during this period, certain types of offences have disappeared or been redefined and new categories of offences have been introduced.
- *Counting of Juveniles and Adults:* The statistics list offences committed by juveniles and adults for some years, and only give information for adults in other years.
- *Summary and Indictable Offences:* Both summary and indictable offences are reported in some years, while in other years only indictable offences are reported.
- *Incomplete Reporting:* Information was not collected uniformly from all provinces during this period. Before 1900 and after 1969, the reports from some provinces were not included.

- *Decline in Reporting:* Toward the end of the 1960s there was a marked decline in the reporting of court statistics. The reasons for this decline have not been fully documented. This reduction may have been due to: increased court caseloads; the rising costs of court administration; and reservations about the utility of these statistics. As a result, the statistics for the 1970s are likely to be less reliable than those for preceding years.

## Classification of Sexual Offences

In the sexual offences of the *Criminal Code*, the ages of persons with whom certain sexual acts are proscribed are specified in some instances but not in others. The following classification was developed as an operational framework within which to assess historical trends in the reported occurrence of sexual offences.

1. Sexual offences committed solely against children and youths, for example, sexual intercourse with a female under 14, or with a female 14 or 15.
2. Sexual offences that are committed predominantly against children and youths, for example, incest and the "seduction" offences.
3. Sexual offences that may be, but are not necessarily, committed against children and youths, for example, rape, indecent assault, gross indecency, buggery, and sexual intercourse with a feeble-minded female.

This classification was used as the basis for extracting, for even-numbered years from 1876 to 1972, information on sexual offences from the annual publications, *Criminal Statistics* and *Statistics of Criminal and Other Offences*.

Because of the inherent limitations in the statistical sources, only broad trends are noted and no analysis is given of the persons charged or convicted of sexual offences. Even so, **the statistics clearly indicate that sexual offences reported to the authorities are committed almost exclusively by males.** In 1981, for instance, a total of 4361 adults were charged with rape or indecent assault, of whom only 62 (1.4 per cent) were women (all of whom were charged with indecent assault).

In the early 1900s, the conviction rates for sexual offences committed by juveniles, typically at the 85 to 95 per cent level, were much higher than those for adults. Since that time, these rates have fallen below the level for adults. Of the males who were charged with sexual offences, statistics for recent years indicate that between 10 and 20 per cent are juveniles. In contrast to the rising trend in conviction rates concerning sexual offences committed by adults, comparable rates for juveniles have declined. These changes are most likely a reflection of the phased introduction of other kinds of procedures adopted for the management of juvenile offenders. As the research findings of the Committee indicate, a substantial proportion of sexual offences against children and youths is committed by persons who are themselves juveniles.

## Reported Incidence

During the closing years of the nineteenth century, Canadian courts annually reported fewer than 200 charges of sexual offences. During this period, the *number* of persons who were charged ranged between a low of 94 and a high of 160. By the late 1960s, the annual number of persons who were charged with sexual offences had risen, approximately by a factor of 10, to more than 1400 each year.

When the number of reported sexual offences is viewed relative to the size of the Canadian population at different times during this period, broad trends become evident: there was a gradual increase in the reported rates of these offences during the first three decades; a sharp rise occurred during World War I; and, since then, there has been a gradual decline up to the beginning of the 1970s. From an average level of about 3.5 charges per 100,000 persons during the late 1800s, the rate peaked at 11.0 charges in 1914. Subsequently it declined, passing through a series of cyclical fluctuations to a level below 8.0 charges per 100,000 persons. Each of the first four cyclical fluctuations lasted approximately eight years. A more marked decline in the rate of charges started at the end of World War II. The fifth fluctuation occurred in the mid-1960s; this was followed by a drop to 6.0 charges per 100,000 persons, a level comparable to that of about half a century earlier.

The annual rates of charges per 100,000 persons were re-analyzed by the statistical procedure known as linear spline regression analysis. This procedure highlights the nature of the major trends which occurred. Based on this analysis, there were three different periods in the reporting of charges involving sexual offences. These periods correspond generally to the trends in annual rates per 100,000 persons of all charges reported.

The results obtained by using this more powerful statistical procedure show that between 1876 and 1902, there was a gradual increase in: the rates of charges involving sexual offences; and the rates of persons who were charged with sexual offences. These rates rose sharply between 1902 and 1914. During the third period, there was an extended and gradual decline of about 25 per cent between the beginning of World War I and the end of the 1960s.

The results of both methods of statistical analysis (the annual rates and regression analysis) indicate that the early years of World War I were a watershed point of change, namely, from a long-term rise to a subsequent decline in the rates of sexual offences officially reported to the authorities. Not unexpectedly, these rates declined during both World Wars and increased briefly during the postwar years.

Acknowledging the limitations of these statistics, there are two possible explanations which may account for these trends: that the changes in the reported incidence of sexual offences represented basic changes in the extent to which these crimes were occurring at different times; or that the trends noted are only an artifact of changing legal definitions and statistical practices in the



classification and labelling of sexual offences. These explanations can be partially tested by reviewing the relationship of reported sexual offences as a proportion of: all offences committed against persons; and all types of criminal offences. The results of this analysis suggest that the trends which have occurred in the incidence of sexual offences are likely to have stemmed from basic changes in Canadian society, and are less likely to have resulted from variations in the classification procedures or from the incomplete reporting of offences.

If the long-term trends in the rates of reported sexual offences were due to changes in the reliability and completeness in the reporting of court cases, then comparable changes could be expected in the reporting of other categories of offences (for example, offences against persons and all types of offences).

Over the half century between 1876 and 1924, sexual offences (charges and persons charged) rose from 2 per cent of offences against the person to a peak of 18 per cent in 1924. If allowance is made for the reduced reliability of court statistics prior to the mid-1880s, and if 1888 is selected as the starting point, the ratio approximately doubled during this period. A change of the same magnitude occurred in the proportion of sexual offences among all indictable offences, representing a rise from 1.6 per cent to 3.5 per cent.

Between 1924 and 1938, these two proportions declined to about their pre-1900 levels, through a series of small cyclical fluctuations. Then, starting about 1948, the two rates peaked in the late 1950s and early 1960s. Since then, these proportions showed, within an erratic pattern of fluctuation, an overall decline.

The variation in the rates of these two broad categories of offences is comparable over a period of about a century, but is dissimilar to the trends for reported sexual offences. The results indicate that the relative proportions of sexual offences to all offences against the person and to all indictable offences have varied considerably. The sequence of changes occurring in these ratios suggests that there have been four identifiable periods since 1876 in the reported occurrence of sexual offences. The proportion of sexual offences rose during two periods (1876 to 1922; and 1950 to about 1960), and declined during two other periods (1922 to 1950; and from 1960 onward). These fluctuations suggest that the actual occurrence of sexual offences was also rising and falling cyclically, and providing a flow and ebb in the number of cases brought to court.

A number of factors may account for historical changes in the incidence of sexual offences known to the authorities. For example, the rise in the proportion of sexual offences relative to other sorts of offences from 1876 to 1922 can at least partly be attributed to the important legal initiatives undertaken during that period. Although incest had been an offence under the laws of some provinces, it became a federal criminal offence in 1890. The offence of "gross indecency" came into effect the same year. The offence of sexual intercourse with a feeble-minded female was enacted in 1886, and was gradually widened to include females who were insane (1887) and females who were deaf and dumb

(1892). The year 1886 also witnessed the enactment into Canadian criminal law of the offence of seducing girls between the ages of 12 and 16. Similarly, the offence of seduction under promise of marriage, which first appeared in 1886 and which originally applied only to females who were under 18, was widened in 1887 to apply to girls under 21. In 1890, the offence of unlawful "carnal knowledge" of a female, which since 1869 had applied to girls under 12, was extended to include girls 12 and 13. This offence was widened further in 1892: the accused's belief that the girl was older than the prescribed age was made irrelevant to the charge.

Another important criminal law amendment was introduced in 1890; henceforward, it was no defence to a charge of indecent assault on a female or male under 14 that the young person consented to the sexual act. These several legal initiatives, which materially widened the scope of sexual offences relating to children and youths in the last part of the nineteenth century undoubtedly account for much of the trend noted earlier. Other, less identifiable, factors also come into play. Changes in the law of evidence, for example, the necessity of "corroboration", may influence the extent to which alleged sexual offenders can be successfully prosecuted, and may, in turn, influence the charging practices of the police and the Crown. Enforcement policies and resource allocation within police forces and within provincial departments of the Attorney General will also bear on the charging and conviction rates relating to sexual offenders at a given time.

During the past three decades, an increasing number of persons charged with sexual offences has been remanded by the courts for psychiatric and psychological assessment, counselling and treatment. This option has been advocated strongly in briefs put forward by the medical specialty of psychiatry, in which it has been contended that sexual deviates can be dealt with more effectively by means other than imprisonment. From this viewpoint, persons who commit certain types of sexual acts are less appropriately viewed as criminals than as persons having some type of personal disorder, and in a few instances, as persons suffering from mental illness. To the extent that the option of treatment has been taken in the management of suspected sexual offenders in recent years, decisions of this kind would have served to reduce the number of convictions for sexual offences.

Another explanation that may partially account for the cyclical fluctuation in the reported incidence of sexual offences is the changing nature of the moral boundaries of Canadian society. From this perspective, during periods of heightened public morality, the types of marginal behaviour that are tolerated will diminish and, consequently, more of those persons displaying unacceptable behaviours are liable to be caught and to be punished more severely than when social and moral norms are more elastic. Conversely, during periods when society's moral boundaries are more flexible and permeable, there is likely to be greater tolerance of all forms of deviance, and less emphasis on punishment. When this happens, the social controls imposed on persons committing sexual offences are less severe and the punishments meted out are lighter.



If this explanation is valid, then the initial gradual increase in reported sexual offences could possibly have displaced to some degree the reporting of other offences considered to be less serious, resulting in sexual offences appearing as an increase in the proportion of all indictable offences. Following an extended period of growth in the reported rates of sexual offences, the moral boundaries may have subsequently contracted in response to pressures from the community and resulted in the application of more stringent sanctions. A response of this kind would be in force for a number of years until the moral boundaries again became more elastic, resulting in a gradual relaxation of social controls.

There is undoubtedly some validity in each explanation that may be drawn upon to account for the historical variation in the reported incidence of sexual offences. However, there is insufficient documentation to confirm or reject these several hypotheses. Regardless of why the changes happened, and recognizing the methodological limitations in the statistics, there can be little doubt that these changes did occur. **It is reasonable to conclude that in recent decades in Canada, there has been a gradual decline in the reported incidence of sexual offences.** This observation makes no inferences about the actual number of sexual offences which may have occurred in different periods.

## Specific Sexual Offences

The composite rates for all types of sexual offences mask variations in the historical incidence of specific types of sexual offences.

At the end of the nineteenth century, the annual charges for sexual intercourse with a minor varied between six and 10 per cent of all sexual offences. The proportion of this offence rose during the early 1900s to a peak of 28 per cent in the 1920s, and then decreased gradually to between six and seven per cent by the late 1960s.

The offences of incest and seduction were not recorded in published statistics until the 1890s. During the period for which information on incest is available, its proportion relative to all sexual offences has fluctuated between a low of 2.9 per cent and a high of 11.0 per cent, without any consistent trends.

The rates for the offence of seduction varied between about 10 and 15 per cent of all sexual offences in the 30 or so years after 1890. In the 1920s, a long-term decline began, decreasing to less than one per cent by 1948. At most, only one or two cases of seduction were recorded in each year during the 1960s and 1970s.

The proportion of rapes to all charges involving sexual offences ranged between about 18 and 28 per cent from 1890 to 1910. This proportion then decreased to a low of 4.3 per cent in 1936, and subsequently rose to an average annual level of about 10 per cent of all sexual offences by the end of the 1960s. Indecent assault, the offence with the highest incidence of the six types of



Table 13.1

## Specified Sexual Offences as Percentage of All Sexual Offences (1876-1968)

Year	Sexual Intercourse with Minor*		Incest		Seduction	
	Charges	Convictions	Charges	Convictions	Charges	Convictions
1876	40	21	—	—	—	—
1878	2	2	—	—	—	—
1880	35	18	—	—	—	—
1882	35	21	—	—	—	—
1884	2	2	—	—	—	—
1886	2	2	—	—	—	—
1888	9	8	—	—	—	—
1890	8	13	—	—	10	7
1892	10	12	—	—	8	6
1894	8	10	8	3	13	5
1896	9	12	6	8	11	3
1898	7	7	5	1	16	5
1900	12	13	5	5	15	13
1902	11	12	4	2	16	8
1904	15	13	6	7	9	4
1906	17	21	3	2	13	6
1908	14	18	3	3	13	5
1910	16	18	8	11	11	11
1912	17	15	4	4	9	5
1914	12	12	4	4	17	12
1916	16	16	5	4	12	9
1918	17	21	3	2	15	12
1920	17	17	4	3	13	10
1922	20	21	6	9	15	11
1924	27	26	5	6	13	9
1926	28	28	5	5	13	9
1928	21	18	6	6	10	7
1930	20	18	8	10	9	8
1932	19	15	8	10	9	8
1934	21	18	7	8	22	7
1936	23	22	11	13	6	4
1938	18	17	9	11	4	3
1940	17	16	7	8	3	2
1942	14	13	7	7	3	3
1944	13	13	7	7	2	1
1946	13	11	6	6	1	1
1948	12	12	6	7	1	1
1950	11	10	4	4	0	1
1952	11	20	4	4	1	1
1954	10	10	5	5	1	1
1956	10	9	4	4	1	0
1958	11	12	5	5	0	0
1960	13	14	3	3	0	0
1962	10	10	3	3	—	—
1964	7	7	3	3	—	—
1966	7	7	3	3	—	—
1968**	6	7	3	3	—	—

*Research and Analysis Division, Statistics Canada.*

\*In statistics published prior to 1955 this category was designated "carnal knowledge of a young girl". From 1955 on, it was listed as "sexual intercourse".

\*\*1968 is the terminating year because of the absence of Alberta and Quebec figures for 1970 and later years.

Table 13.1 (continued)

## Specified Sexual Offences as Percentage of All Sexual Offences (1876-1968)

Year	Rape		Indecent Assault		Other Sexual Offences	
	Charges	Convictions	Charges	Convictions	Charges	Convictions
1876	—	—	54	72	5	5
1878	48	40	45	53	4	6
1880	—	—	59	74	6	8
1882	—	—	63	75	2	4
1884	39	36	55	57	4	6
1886	41	36	54	59	4	3
1888	23	15	60	68	9	9
1890	29	21	46	53	8	7
1892	19	15	57	61	7	7
1894	18	15	46	58	6	6
1896	22	11	44	58	7	8
1898	21	17	43	59	7	10
1900	28	18	36	46	4	4
1902	20	19	42	50	7	9
1904	18	20	47	55	3	2
1906	16	13	41	45	11	13
1908	18	9	46	58	6	2
1910	14	7	40	42	11	12
1912	12	8	49	57	9	12
1914	11	7	42	48	14	17
1916	9	5	43	49	13	16
1918	9	5	40	41	16	19
1920	8	6	43	41	16	22
1922	8	6	38	38	12	15
1924	6	5	37	42	10	11
1926	6	6	36	40	11	12
1928	11	9	39	44	11	13
1930	9	5	37	41	13	18
1932	8	6	41	44	14	18
1934	7	7	40	44	12	15
1936	4	3	37	34	19	23
1938	8	6	40	41	21	22
1940	7	6	45	45	20	23
1942	7	5	46	46	24	25
1944	9	5	43	44	26	30
1946	8	6	47	47	27	30
1948	10	5	44	43	28	32
1950	13	8	49	50	23	27
1952	13	8	49	52	21	25
1954	7	5	41	39	36	40
1956	11	7	39	39	36	40
1958	11	7	42	41	31	36
1960	10	7	52	51	22	25
1962	8	6	56	55	23	26
1964	10	6	48	46	33	37
1966	9	6	57	58	23	26
1968**	15	10	54	53	22	27

Research and Analysis Division, Statistics Canada.

\*\*1968 is the terminating year because of the absence of Alberta and Quebec figures for 1970 and later years.

sexual offences, varied between 36 and 63 per cent. Its proportion, which was generally stable within the mid-40 per cent range during the late 1890s and early 1900s, dropped to the upper 30 per cent range in the 1920s, and then rose again to the upper 40 per cent range by the early 1950s.

The final category of “other” sexual offences included: buggery, bestiality and gross indecency. As a proportion of all sexual offences, the rates for this “other” category rose to a peak of 36 per cent between 1954 and 1956, and then declined to a range between 20 and 30 per cent in the 1960s.

These results indicate that indecent assault has always been the most frequently reported offence. During this period of almost a century, no other offence ranked consistently in second place. At different times, the second most frequently reported offence was: sexual intercourse with a minor; rape; seduction; and “other” sexual offences. Of the six categories of sexual offences for which historical statistics were reviewed, only incest was consistently at or near the bottom in relation to its reported occurrence.

Two of the three categories of sexual offences in which children are most frequently victims (sexual intercourse with a minor and seduction) peaked in reported occurrence in the 1920s, and subsequently declined. **These results confirm the conclusion (based on the spline regression analysis) that not only had the reported occurrence of all types of sexual offences declined during the several decades preceding the 1970s, but that the proportion of reported sexual offences committed against children had also declined during this period.**

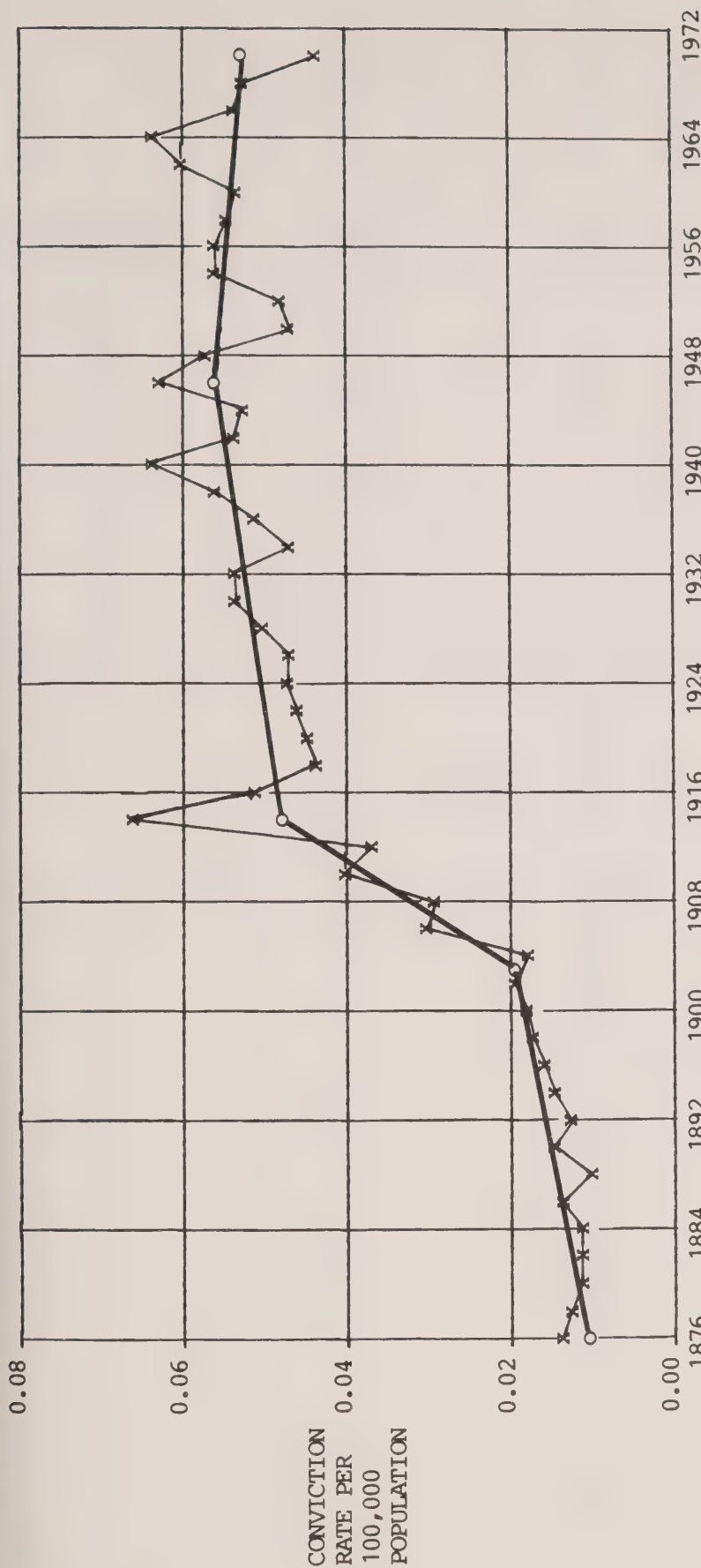
These observations on the changing patterns of sexual offences against children do not indicate the nature of such offences. As the findings given elsewhere in this Report show, some sexual offences, for example, indecent assaults, encompass a wide variety of sexual acts.

## Conviction Rates

In comparison with statistics based on charges and/or persons charged with offences, statistics on convictions offer a clearer indication of the application of prevailing legal standards in different periods. Between 1876 and the early 1970s there was a sharp increase in the number of convictions for sexual offences. During the 1880s and 1890s, there were fewer than 100 convictions annually; the number of the convictions rose to almost 500 each year by around 1930 and then doubled to approximately 1000 convictions per year by 1960. The number of convictions remained about this level until the early 1970s. When the number of convictions is converted to a rate per 100,000 persons, the results indicate that the apparent absolute increase during this period was offset by growth in the Canadian population.

The conviction rates for sexual offences are depicted in Graph 13.1 (based on a spline regression analysis). In comparison with the rates of charges and





RAW DATA SERIES = x  
MULTI-SEGMENT LINE = o

FIRST SLOPE = 0.00  
Y ZERO INTERCEPT = 0.01  
SECOND SLOPE = 0.0  
Y ZERO INTERCEPT = 0.07  
THIRD SLOPE = 0.00  
Y ZERO INTERCEPT = 0.04  
FOURTH SLOPE = -0.00  
Y ZERO INTERCEPT = 0.06

FIRST TURNING POINT X:28.50  
Y:0.02  
SECOND TURNING POINT X:30.50  
Y:0.05  
THIRD TURNING POINT X:70.50  
Y:0.06

TOTAL SSR = 0.00

SOURCE: Statistics of Criminal and Other Offences,  
Statistics Canada. Persons convicted  
selected sexual offences per 100,000  
population; Biennial Data

Table 13.2

**Convictions as Percentages of Charges For: Sexual Offences,  
Offences Against the Person and All Indictable Offences (1876-1968)**

Year (1876-1968)	Type of Offence		
	Sexual Offences	Offences Against Person	All Indictable Offences
	Per Cent	Per Cent	Per Cent
1876	39.9	72.1	76.0
1878	36.4	67.4	71.1
1880	44.2	68.1	69.0
1882	41.9	70.5	70.0
1884	52.5	58.1	57.0
1886	52.0	64.8	63.8
1888	56.4	62.7	63.9
1890	56.3	65.8	67.6
1892	45.7	67.1	67.3
1894	49.4	69.5	69.2
1896	45.9	68.4	70.4
1898	47.7	65.7	71.0
1900	44.9	63.8	68.5
1902	50.0	60.7	66.3
1904	42.6	63.7	68.2
1906	57.0	69.4	74.2
1908	46.8	70.9	74.4
1910	58.9	74.9	76.4
1912	57.1	74.5	77.2
1914	59.1	71.7	76.5
1916	58.3	73.9	80.0
1918	59.7	70.9	62.6
1920	59.7	72.0	79.5
1922	56.4	68.0	74.7
1924	60.6	72.1	78.7
1926	64.6	74.5	79.4
1928	64.8	74.2	81.4
1930	65.2	71.7	81.9
1932	67.2	70.6	83.4
1934	66.6	71.7	84.7
1936	69.8	71.5	84.8
1938	72.5	75.3	85.5
1940	76.2	77.3	87.3
1942	76.7	76.8	86.8
1944	71.9	76.7	87.4
1946	76.2	78.6	87.0
1948	71.7	77.0	86.6
1950	76.1	77.7	86.0
1952	76.9	76.2	84.8
1954	82.1	78.6	87.4
1956	80.6	80.6	88.9
1958	82.2	81.4	89.9
1960	81.3	81.6	90.1
1962	82.2	82.3	90.1
1964	83.3	83.5	90.4
1966	80.2	83.1	89.4
1968	76.1	81.0	87.7

*Research and Analysis Division, Statistics Canada.*

persons who were charged, the conviction rates for sexual offences show greater stability and fewer short-term cyclical fluctuations. During the last quarter of the nineteenth-century, the conviction rates for sexual offences remained relatively stable, rising to a rate of just under 2.0 convictions per 100,000 persons by the turn of the century. During the second period, starting about a decade later, there was a sharp increase: the conviction rate for sexual offences more than doubled during this period. Starting in 1914, and continuing during World War I, there was a brief but sharp decline in the conviction rates for sexual offences. Between the two World Wars, there was a slight increase in these rates; following World War II, there has been an equally slight decrease.

While there was no appreciable change in the conviction rates for sexual offences between the end of World War I and the early 1970s, there was a sharp increase in the proportion of cases resulting in convictions. From 1876 to 1910, this proportion fluctuated between 30 and 52 per cent. Between 1910 and 1922, the proportion remained in a range between 56 and 59 per cent. From 1922 to the 1960s, there was a steady increase: the proportion of cases heard to convictions reached a plateau at above the 80 per cent level. **These results show clearly that, in relation to cases of sexual offences which came to their attention, police and prosecutors have in recent years been more successful in securing convictions for sexual offences than in the past.**

The rates of convictions to charges for sexual offences rose sharply in comparison to comparable rates, which were initially higher for: all offences against the person; and all indictable offences. The sexual conviction rate (as a percentage of charges) was, until the early 1900s, between one-third and one-half of those for the other types of offences (against the person and all indictable offences); it rose to parity with the other two series toward the end of this period.

This increase in the conviction rates for sexual offences occurred in all regions of the country, but was consistently higher in some provinces than in others. During this period of about a century, the rank order of the provinces in terms of these rates remained relatively stable. New Brunswick and Quebec were, in that order, the provinces with consistently the highest conviction rates, while Nova Scotia and Ontario were consistently the provinces with the lowest conviction rates. **These trends suggest that there may have been long-standing differences between provinces in the administration of justice relating to the prosecution of sexual offenders.**

During the 1960s and early 1970s, the range of differences narrowed in the provincial conviction rates for sexual offences. At this time the rates for British Columbia, Alberta, Manitoba, Ontario and Nova Scotia converged into a closer cluster for three categories of offences: sexual offences; offences against the person; and all indictable offences. **These rising and converging rates suggest that in recent times there may have been a more consistent and uniform application of prosecutorial practice than in the past.**



The trends in the ratio of convictions to charges have not been uniform in relation to specific categories of sexual offences. These historical trends for specific categories of sexual offences include:

*Variation in Conviction Rates*

- High year-to-year variability in conviction rates for: sexual intercourse with a minor; incest; and rape.
- High rates in the 1800s for indecent assault. These rates decreased to a relatively low level by the 1970s.

*Level of Convictions* (relative to the average for all sexual offences)

- Significantly below average for rape.
- Significantly below average for sexual intercourse with a minor.
- Significantly above average for incest.

*Provincial Variations*

- Quebec was consistently above, and Ontario consistently below, the national average for each category.

These trends in the ratio of convictions to charges suggest that sexual offences in which children have been victims have not been handled differently than those that were committed against adults.

## Sentences

The sentences handed down by courts are a measure of the relative gravity with which different types of acts are regarded by the courts. Sentences for sexual intercourse with a minor appear to have become less severe over the years; prior to 1900, over half of the persons who were convicted of this offence were sentenced to a term in penitentiary, but this proportion has subsequently declined. Sentences for incest have generally remained severe; in the 1960s, almost two-thirds of persons convicted of incest were sentenced to penitentiary. Sentences for rape have shown a slow progressive rise in severity: penitentiary terms (two years or more) were imposed in about half of all such convictions around the turn of the century, in contrast to a proportion of almost two-thirds by the 1960s. Indecent assault convictions have, with general consistency, resulted in sentences that have been light, and appear to have gotten progressively lighter. The majority of offenders convicted of indecent assault have been sentenced to incarceration in provincial institutions, with 5-15 per cent of convicted offenders receiving penitentiary terms. The lightest sentences of all have been for sexual offences in the "other" category, especially for the offence of bestiality.

## Summary

The review of historical statistics on charges and convictions for sexual offences reveals a number of significant trends in the reported incidence of these offences. Between 1876 and the early 1970s, these changes include:

1. *Incidence of Charges:* The rates of charges for sexual offences rose gradually at the turn of the century, peaked in 1914, and declined in recent decades to a level of about 6.0 charges per 100,000 persons by the early 1970s.
2. *Incidence of Specific Sexual Offences:* Offences comprising sexual intercourse with a minor were initially between six and 10 per cent of all offences, peaked at 28 per cent in the 1920s, and decreased to between six and seven per cent in the 1960s. The rates for incest have fluctuated between 2.9 and 11.0 per cent of all sexual offences. In recent years, there have been few reported cases of seduction.
3. *Conviction Rates:* The conviction rates for sexual offences were at a level just under 2.0 per 100,000 persons in 1900; these rates increased sharply before World War I, and then declined. There has been no appreciable change in the convictions rates for sexual offences between the end of World War I and the early 1970s.
4. *Proportion of Convictions to Charges:* Of the cases of sexual offences that have been brought to court, there has been a sharp increase in the proportion of persons who have been convicted. Between 1876 and 1910, the proportion of convictions to charges was between 30 and 52 per cent; from 1910 to 1922, it rose to a range between 56 and 59 per cent; and from 1922 onward, it increased to a level above 80 per cent.
5. *Provincial Variations:* There have been longstanding differences between provinces with respect to conviction rates for sexual offences. In recent years, there has been a trend towards a convergence in these rates.
6. *Conviction Rates — Children and Adults:* There are no consistent differences in the conviction rates for sexual offences in which children or adults were victims.
7. *Sentences:* The trends for the sentencing of convicted sexual offenders have differed for specific types of sexual offences. Sentences for incest have generally been severe. In contrast, sentences for sexual intercourse with a minor and indecent assault have become less severe in recent years, while those for rape have increased in severity.





## Chapter 14

# Evidence of Children

A crucial issue in cases of child sexual abuse is whether the young victim will be deemed legally competent to testify. Since the child typically is the only witness to the assault other than the offender (who cannot be compelled to testify), eliciting the child's testimony in court will usually be vital in order to secure a conviction.<sup>1</sup> The legal tests which determine whether a child may testify in court are reviewed in this chapter.

## Historical Background

At common law, no person could testify at trial unless he or she had sworn an oath before the court that he or she would speak truthfully;<sup>2</sup> this requirement applied to adults and children alike.<sup>3</sup> The historical rationale behind the oath requirement was to admonish witnesses to speak the truth under pain of divine retribution.<sup>4</sup>

It was recognized in the late nineteenth century, however, that disempowering children from testifying because they did not understand the nature of an oath tended to thwart the protections the criminal law sought to afford them. In 1885, the British Parliament passed a statute (whose long title was *an Act to make further provisions for the Protection of Women and Girls, the suppression of brothels, and other purposes*) which allowed a "child of tender years" to testify in court even though the child's evidence was not taken upon oath.<sup>5</sup> The statute provided that, on charges of "unlawfully and carnally knowing" a girl under the age of 13, or of attempting to do so, the evidence of a child complainant or other child witness of tender years could be received even though unsworn, "provided that no person shall be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution shall be corroborated by some other material evidence in support thereof implicating the accused."<sup>6</sup>

A comparable provision was enacted by the Canadian Parliament in 1890, and applied to the offences of unlawful carnal knowledge of a girl under the age of 14, or an attempt to do so, and of indecent assault on a female.<sup>7</sup> The

1892 *Criminal Code* incorporated a substantially similar provision.<sup>8</sup> The original *Canada Evidence Act* of 1893 likewise adopted a policy of allowing the unsworn evidence of children to be received and acted upon, provided such evidence was corroborated, and extended it to all proceedings under federal law.<sup>9</sup> The sworn-unsworn distinction with respect to the evidence of young children was later introduced into the *Juvenile Delinquents Act*<sup>10</sup> and into most provincial evidence acts. In the 1955 revision of the *Criminal Code*, the mandatory and somewhat wider<sup>11</sup> corroboration requirement enacted in 1890 (which applied to the unsworn evidence of children in trials for certain sexual offences) was made applicable to all *Criminal Code* offences, sexually related or not.<sup>12</sup>

## Current State of the Law<sup>13</sup>

In trials for sexual offences under the *Criminal Code*, the qualification of a "child of tender years" (namely, a child under 14)<sup>14</sup> to testify is governed by section 16 of the *Canada Evidence Act*,<sup>15</sup> which provides:<sup>16</sup>

16. (1) In any legal proceedings where a child of tender years is offered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) No case shall be decided upon such evidence alone, and it must be corroborated by some other material evidence.

Most provincial<sup>17</sup> and territorial evidence acts contain a similar provision,<sup>18-20</sup> as did the recently repealed *Juvenile Delinquents Act*.<sup>21</sup> The law presumes that a child of 14 years of age or older has the capacity to understand the nature of an oath and hence to give sworn evidence.<sup>22</sup> Accordingly, the great majority of problems of competency arise with children under 14 who are called as witnesses at criminal or civil trials.

Under section 16 of the *Canada Evidence Act* and analogous provisions, when a child under 14 is offered as a witness, the trial judge conducts an inquiry to determine whether the child is competent to testify. Where the accused is being tried by jury, the jury remains in the courtroom during this inquiry. If the child is eventually ruled competent to testify, whether upon oath or unsworn, the jury may consider the child's conduct at the hearing in assessing the weight which should be given to his or her subsequent testimony.<sup>23</sup>

In the hearing pursuant to section 16, the trial judge must first determine whether the child understands the nature of an oath. The essence of this inquiry is whether the child understands the moral obligation to tell the truth implicit in the taking of an oath.<sup>24</sup> It is not necessary that the child believe in God or in another Supreme Being, nor is it necessary that the child appreciate

the spiritual “consequences” of lying upon oath,<sup>25</sup> whatever they may be.<sup>26</sup> If the child meets this test, he or she may be sworn.

Where, however, the trial judge is not satisfied that the child understands the nature of an oath, a further inquiry must be made to determine whether the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. If the judge is satisfied that the child has such intelligence and understanding, the unsworn evidence of the child may be heard.<sup>27</sup>

The usual procedure on the inquiry is for the judge to question the child briefly about his or her age, family and schooling, and about the difference between truth and falsehood. After the judge has completed this examination, the respective counsel may ask questions of the child, after which the judge rules on whether the child may testify either under oath, unsworn, or not at all.<sup>28</sup> Canadian courts have held that counsel have an obligation to prepare child witnesses in this respect before the commencement of the trial.<sup>29</sup> In appropriate cases, the trial may be adjourned in order to provide counsel an opportunity to do so.<sup>30</sup>

The law traditionally has assumed that the testimony of children may suffer from certain frailties which diminish its reliability and which render it incautious for a court to make a legal determination on the basis of a child’s testimony standing alone. A child’s relative immaturity, susceptibility to errors in perception, limited powers of recall and articulation, vulnerability to the persuasive influence of others, and other factors,<sup>31</sup> have variously been put forward as justifying the differential treatment of children’s as opposed to adults’ evidence.<sup>32</sup> Accordingly, where a child under 14 testifies under oath, the trial judge must nonetheless warn the jury about the possible unreliability of the child’s evidence and the danger of acting on the child’s uncorroborated evidence.<sup>33</sup> Further, where a child gives unsworn evidence, corroboration of the child’s evidence is required as a matter of law.<sup>34</sup>

In proceedings under the *Young Offenders Act*,<sup>35</sup> the qualification of a “child” or a “young person”<sup>36</sup> to testify is governed by sections 60 and 61 of the Act, which provide:

60 (1) In any proceedings under this Act where the evidence of a child or a young person is taken, it shall be taken only after the youth court judge or the justice, as the case may be, has

- (a) in all cases, if the witness is a child, and
- (b) where he deems it necessary, if the witness is a young person, instructed the child or young person as to the duty of the witness to speak the truth and the consequences of failing to do so.

(2) The evidence of a child or a young person shall be taken under solemn affirmation as follows:

I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth.



(3) Evidence of a child or a young person taken under solemn affirmation shall have the same effect as if taken under oath.

61 (1) The evidence of a child may not be received in any proceedings under this Act unless, in the opinion of the youth court judge or the justice, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) No case shall be decided on the evidence of a child alone, but must be corroborated by some other material evidence.

The evidence of children (and young persons) may only be taken under solemn affirmation under the Act. Section 61(1) qualifies section 60(2), with the result that a child's evidence is to be taken under solemn affirmation only where the judge or justice is of the opinion that the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

Requiring the evidence of children to be given under solemn affirmation removes the basis for distinguishing between sworn and unsworn evidence; the provision that "no case shall be decided on the evidence of a child alone, but must be corroborated by some other material evidence" removes the protection afforded by sworn evidence by treating all children's evidence as inherently unreliable. A child who could give evidence under oath in other proceedings is thus at a disadvantage when testifying under the *Young Offenders Act*. The requirement of a solemn affirmation need not have involved removing the protection afforded by sworn evidence. Bill S-33 provides that no corroboration of evidence is required.

## Canada Evidence Bill, 1982 (Bill S-33)

Bill S-33, which, if enacted, would repeal the existing *Canada Evidence Act*<sup>37</sup> and introduce significant changes to the Canadian law of evidence, provides:

96. Every witness shall be required, before giving evidence, to identify himself and either to take an oath or make a solemn affirmation at his option, in the form and manner provided by the law that governs the proceeding.

97. (1) Where a proposed witness is a person of seven or more but under fourteen years of age or is a person whose mental capacity is challenged, the court, before permitting that person to give evidence, shall conduct an inquiry to determine whether, in its opinion, that person understands the nature of an oath or a solemn affirmation and is sufficiently intelligent to justify the reception of his evidence.

(2) A party who challenges the mental capacity of a proposed witness of fourteen or more years of age has the burden of satisfying the court that there is a real issue as to the capacity of the proposed witness to testify under an oath or a solemn affirmation.

98. A person under seven years of age or a person who cannot give evidence under section 97 shall be permitted to give evidence on promising to tell the truth if, in the opinion of the court after it has conducted an inquiry, that person understands that he should tell the truth and is sufficiently intelligent to justify the reception of his evidence.

125. (1) No corroboration of evidence is required and no warning concerning the danger of acting on uncorroborated evidence shall be given in any proceeding.

(2) The court shall instruct the trier of fact on the special need for caution in any case in which it considers that an instruction is necessary, and shall in every case give the instruction with respect to

- (a) the evidence of a witness who has testified without taking an oath or making a solemn affirmation;
- (b) the evidence of a witness who, in the opinion of the court, would be an accomplice of the accused if the accused were guilty of the offence charged;
- (c) the evidence of a witness who is proved to have been convicted of perjury;  
or
- (d) a charge of treason, high treason or perjury where the incriminating evidence is that of only one witness.

These proposals would effect a welcome, if modest, liberalization of the competency rules with respect to children's evidence. Although a child between the ages of seven and 14 would be entitled to "affirm" instead of taking the oath, the common criterion for the reception of both sworn and unsworn evidence would continue to be the perceived intelligence of the child. The most significant reform proposed by Bill S-33 is the repeal<sup>38</sup> of section 586 of the *Criminal Code*, which provides that "no person shall be convicted on an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated in a material particular by evidence that implicates the accused." Under Bill S-33, although a trial judge would be required to warn the jury of the special need for caution in acting on the unsworn evidence of a child, the corroboration of a child's unsworn evidence would no longer be required as a matter of law.<sup>39</sup>

## Summary

A central term of reference of the Committee was "to conduct a study to determine the adequacy of the laws in Canada in providing protection from sexual offences against children and youths, and to make recommendations for improving this protection." **The Committee is strongly of the view that Canadian children cannot fully enjoy the protections the law seeks to afford them unless they are allowed to speak effectively in their own behalf at legal**

proceedings arising from allegations of sexual abuse. Accordingly, the Committee recommends that there be no special rules of testimonial competency with respect to children; a young person's testimony should be heard and weighed by the trier of fact in the same manner as the testimony of any other witness in the proceedings. Given the generally private nature of child sexual abuse, the overarching legal principle that all relevant evidence should be admissible in court takes on added significance. In the Committee's judgment, those who believe that fetters should be placed on the reception of young children's testimony by way of special competency requirements should bear the onus of demonstrating that the approach advocated by the Committee is contrary to the demands of justice.

The Committee draws support for its approach to children's testimony from the following grounds:

1. To make a child's testimonial competency contingent upon or influenced by the child's age fails to take into account the cognitive and developmental differences among children of the same age and, in the Committee's view, is wrong in principle.

Further, the common law was itself equivocal in this regard. For example, one eighteenth century case stated that a child under the age of seven years could, in appropriate circumstances, be sworn,<sup>40</sup> while another case, decided in the same century, expressed the view that only a child nine years of age or older could take the oath.<sup>41</sup> In *Sankey v. The King*,<sup>42</sup> Chief Justice Anglin of the Supreme Court of Canada stated that "of no ordinary child over seven years of age can it be safely predicated, from his mere appearance, that he does not understand the nature of an oath."<sup>43</sup> That an age-presumptive test of competency tends to be arbitrary is also borne out by actual judicial experience with Canadian children of different ages. In one case, a child five years and nine months old was deemed competent to take the oath,<sup>44</sup> while in another, a child four years-old was qualified to give unsworn evidence.<sup>45</sup>

2. The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have become very close together in practice,<sup>46</sup> notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers that the subtle practical distinction between these two tests is far too tenuous a basis upon which to support a legal distinction.
3. The Committee's research findings indicate that the conventional assumptions about the veracity and powers of recall and articulation of young children are largely unfounded and, in any event, vary significantly among different children, as they do among adults.
4. Permitting the trier of fact to determine the weight that should be accorded a child's testimony and generally to assess the child's credibility, without "qualifying" the child witness beforehand, is by no means unprecedented in common law jurisdictions. Rule 601 of the United States



Federal Rules of Evidence abolishes all specific grounds of testimonial incompetency, including those relating to children, and renders the child's testimony a matter of weight to be determined by the trier of fact, rather than a matter of admissibility or presumed unreliability.<sup>47</sup> Thirteen states have adopted this standard in proceedings under state criminal law.<sup>48</sup>

The common sense approach to child credibility implicit in Rule 601 also finds strong support in the scholarly writings of the two leading American commentators (Wigmore and McCormick) on the law of evidence.<sup>49</sup> The Committee adopts the following comments of Wigmore:<sup>50</sup>

A rational view of the peculiarities of child-nature, and of the daily course of justice in our courts, must lead to the conclusion that the effort to measure "a priori" the degrees of trustworthiness in children's statements, and to distinguish the point at which they cease to be totally incredible and acquire suddenly some degree of credibility, is futile and unprofitable. The desirability of abandoning this attempt and abolishing all grounds of mental or moral incapacity has already been noted. . . . The reasons apply with equal or greater force to the testimony of children. Recognizing on the one hand the childish disposition to weave romances and to treat imagination for verity, and on the other the rooted ingenuousness of children and their tendency to speak straightforwardly what is on their minds, it must be concluded that the sensible way is to put the child upon the stand and let it tell its story for what it may seem to be worth. To this result legislation must come.

5. The Committee would add, however, that in the context of child sexual abuse, children's alleged "disposition to weave romances and to treat imagination for verity" is strongly refuted by the research findings obtained in its several national surveys.

The approach to children's evidence advocated by the Committee finds additional support in the *Evidence Code* proposed by the Law Reform Commission of Canada.<sup>51</sup> The Law Reform Commission states, in its commentary on the pertinent provisions of the *Evidence Code*:<sup>52</sup>

There are no special rules of competency in the Code with respect to children. The frailties inherent in the testimony of immature witnesses should affect the weight of the evidence rather than its admissibility.

**In light of these several considerations, the Committee recommends that the *Canada Evidence Act*, the *Young Offenders Act* and each provincial and territorial evidence act be amended to provide that:**

1. Every child is competent to testify in court and the child's evidence is admissible. The cogency of the child's testimony would be a matter of weight to be determined by the trier of fact, and not a matter of admissibility.
2. A child who does not have the verbal capacity to reply to simply framed questions could be precluded from testifying.

3. The court shall instruct the trier of fact on the need for caution in any case in which it considers that an instruction is necessary.

In the Committee's view, these reforms would help to ensure that Canadian children receive the full benefit of the protection the law seeks to afford them.

## References

### Chapter 14: Evidence of Children

- <sup>1</sup> Eliciting the child's testimony in court will not be necessary where the accused enters a guilty plea, or where the Crown secures the probative testimony of other witnesses.
- <sup>2</sup> Schiff, *Evidence in the Litigation Process* (Toronto: Carswell, 1978) at 141.
- <sup>3</sup> *R. v. Brasier* (1779), 168 E.R. 202.
- <sup>4</sup> Schiff, *supra*, note 2.
- <sup>5</sup> *Criminal Law Amendment Act, 1885*, 48 & 49 Vict., c. 69, s. 4. (U.K.).
- <sup>6</sup> *Ibid.*
- <sup>7</sup> *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 13.
- <sup>8</sup> *The Criminal Code, 1892*, S.C. 1892, c. 29, s. 685.
- <sup>9</sup> *The Canada Evidence Act, 1893*, S.C. 1893, c. 31, s. 25.
- <sup>10</sup> *The Juvenile Delinquents Act, 1908*, S.C. 1908, c. 40, s. 15.
- <sup>11</sup> Section 586 of the *Criminal Code* provides that a child's unsworn evidence must be corroborated "in a material particular by evidence that implicates the accused" (emphasis added), while section 16(2) of the *Canada Evidence Act* provides that such evidence must be corroborated "by some other material evidence".
- <sup>12</sup> S.C. 1953-54, c. 51, s. 566.
- <sup>13</sup> This section has been adapted from the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 285-91.
- <sup>14</sup> See *R. v. Antrobus* (1946), 87 C.C.C. 118 (B.C.C.A.); *R. v. Nicholson* (1950), 98 C.C.C. 291 (B.C.S.C.); and *R. v. Armstrong* (1959), 125 C.C.C. 56 (B.C.C.A.).
- <sup>15</sup> *Canada Evidence Act*, R.S.C. 1970, c. E-10.
- <sup>16</sup> *Ibid.*, s. 16.
- <sup>17</sup> British Columbia: *Evidence Act*, R.S.B.C. 1979, c. 116, s.5.  
Alberta: *Alberta Evidence Act*, R.S.A. 1980, c. A-21, s. 20.  
Saskatchewan: *Saskatchewan Evidence Act*, R.S.S. 1978, c. S-16, s. 42.  
Manitoba: *Manitoba Evidence Act*, R.S.M. 1970, c. E-150, s. 26.  
Ontario: *Evidence Act*, R.S.O. 1980, c. 145, s. 18.  
Quebec: *Code of Civil Procedure*, R.S.Q. 1980, c. C-25, s. 301.  
New Brunswick: *Evidence Act*, R.S.N.B. 1973, c. E-11, s. 24.  
Nova Scotia: *Evidence Act*, Cons. Stat. N.S. 1980, c. E-18, s. 57A.  
Prince Edward Island: *Family and Child Services Act*, S.P.E.I. 1981, c. 12, s. 30.  
Newfoundland: *The Evidence (Amendment) Act*, S. Nfld. 1972, No. 3, s. 2.
- <sup>18</sup> Yukon Territory: *Evidence Ordinance*, R.O.Y.T. 1971, c. E-6, ss. 23, 17.
- <sup>19</sup> Northwest Territories: *Evidence Ordinance*, R.O.N.W.T. 1974, c. E-4, ss. 23, 17.
- <sup>20</sup> The *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 13 at 285-86, is in error in this regard.
- <sup>21</sup> *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 19.
- <sup>22</sup> *R. v. Armstrong* (1959), 125 C.C.C. 56 (B.C.C.A.).



- <sup>23</sup> *R. v. Bannerman* (1966), 55 W.W.R. 257 (Man. C.A.), *aff'd* (1966), 57 W.W.R. 736 (S.C.C.); *R. v. Reynolds* (1950), 34 Cr. App. R. 60 (C.C.A.).
- <sup>24</sup> *Fletcher v. The Queen* (1982), 1 C.C.C. (3d) 370 (Ont. C.A.); *R. v. Bannerman*, *ibid.*; *R. v. Truscott*, [1967] S.C.R. 309; *R. v. Taylor* (1970), 1 C.C.C. (2d) 321 (Man. C.A.); and *R. v. Dinsmore*, [1974] 5 W.W.R. 121 (Alta. S.C.).
- <sup>25</sup> *R. v. Bannerman*, *supra*, note 23; *Fletcher v. The Queen*, *supra*, note 24. But see *R. v. Budin* (1981), 58 C.C.C. (2d) 352 (Ont. C.A.).
- <sup>26</sup> *R. v. Bannerman*, *supra*, note 23.
- <sup>27</sup> *R. v. Bannerman*, *supra*, note 23.
- <sup>28</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 13 at 286.
- <sup>29</sup> *R. v. Bannerman*, *supra*, note 23; *R. v. Brown* (1951), 99 C.C.C. 305 (N.B.C.A.); and *R. v. Armstrong* (1907), 12 C.C.C. 544 (Ont. C.A.).
- <sup>30</sup> *R. v. Cox* (1898), 62 J.P. 89; *R. v. Baylis* (1849), 13 L.T. (O.S.) 509; and *R. v. Nicholas* (1846), 175 E.R. 102.
- <sup>31</sup> See generally Lloyd, "The Corroboration of Sexual Victimization of Children" in *Child Sexual Abuse and the Law* (3rd ed. Washington, D.C.: American Bar Association, 1982) at 103 ff.
- <sup>32</sup> *Ibid.*, at 103-106. See also Melton, Bulkley, and Wilkan, "Competency of Children as Witness" in *Child Sexual Abuse and the Law*, *ibid.*, at 125-39.
- <sup>33</sup> *Kendall v. The Queen*, [1962] S.C.R. 469; *R. v. Burdick* (1975), 27 C.C.C. (2d) 497 (Ont. C.A.); and *R. v. Tennant and Naccarato* (1975), 23 C.C.C. (2d) 80 (Ont. C.A.).
- <sup>34</sup> *Criminal Code*, R.S.C. 1970, c. C-34, s. 586; *Canada Evidence Act*, R.S.C. 1970, c. E-10, s. 16(2); *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 19(2).
- <sup>35</sup> *Young Offenders Act*, S.C. 1980-81-82, c. 110.
- <sup>36</sup> *Ibid.*, section 2(1): In this Act, "child" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of twelve years: "young person" means a person who is or, in the absence of evidence to the contrary, appears to be (a) twelve years of age or more, but (b) under eighteen years of age or, in a province in respect of which a proclamation has been issued under subsection (2) prior to April 1, 1985, under sixteen or seventeen years, whichever age is specified by the proclamation, and, where the context requires, includes any person who is charged under this Act with having committed an offence while he was a young person or is found guilty of an offence under this Act.
- <sup>37</sup> *Canada Evidence Act*, R.S.C. 1970, c. E-10.
- <sup>38</sup> *Canada Evidence Act*, 1982, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.).
- <sup>39</sup> *Ibid.*, s. 125.
- <sup>40</sup> *R. v. Brasier*, *supra*, note 3.
- <sup>41</sup> *R. v. Travers* (1726), 93 E.R. 793 (K.B.).
- <sup>42</sup> [1927] S.C.R. 436.
- <sup>43</sup> *Ibid.*, at 440.
- <sup>44</sup> *Strachan v. McGinn* (1936), 50 B.C.R. 394 (S.C.).
- <sup>45</sup> *R. v. Pailleur* (1909), 20 O.L.R. 207 (C.A.).
- <sup>46</sup> See, e.g., *Fletcher v. The Queen*, *supra*, note 24.
- <sup>47</sup> Fed. Rules Evid. Rule 601, 28 U.S.C.A.
- <sup>48</sup> Ark. Stat. §28-1001 (Rule 601) (1975); Fla. Stat. §90.601 (1978); Me. R. Evid. 601 (1976); Mich. Evid. Rule 601 (1978); Neb. Rev. Stat. §27-601 (1975); Nev. Rev. Stat. 50.015 (1977); N.J. Stat. §2A:81-1 (1976); N.M. Rule of Evid. 601 (1978); N.D.R. Evid. 601 (1977); Pa. Consol. Stat. tit. 42, §5911 (1978); Wis. Gen. Stat. §906.01 (1975); Wyo. R. Evid. 601 (1978).
- <sup>49</sup> Wigmore, 2 *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (3rd ed. Boston: Little, Brown and Co., 1940) §509 at 600-601; McCormick, *Handbook of the Law of Evidence* (2nd ed. St. Paul: West Publishing Co., 1972) §62 at 140-41.
- <sup>50</sup> Wigmore, *ibid.*, at 600-601.
- <sup>51</sup> Law Reform Commission of Canada, *Report on Evidence* (Ottawa: Supply and Services Canada, 1977), ss. 50-53.
- <sup>52</sup> *Ibid.*, at 87.

## Chapter 15

# Corroboration

The requirement of corroboration is closely bound up with the different legal tests which determine whether a child may testify at a judicial proceeding. As noted in Chapter 14, where a child gives evidence not under oath (unsworn evidence), the child's testimony needs to be corroborated, namely, there must exist some additional evidence which is consistent with the child's story and which tends to confirm his or her credibility as a witness. **Although Canadian law relating to corroboration, particularly in the context of sexual offences, has undergone significant changes in recent years, these statutory reforms have not reflected any change in the conventional assumptions about the credibility of children. Canadian legal doctrine continues to assume that a young child's testimony is inherently untrustworthy.**

This chapter reviews the nature of corroborative evidence, the situations in which it is required by law, and the conventional justifications for requiring that a young person's testimony be corroborated.

## The Nature of Corroboration

Recent decisions of the Supreme Court of Canada<sup>1</sup> have tended to cast aside "the technical *impedimenta* with which the idea of corroboration has increasingly been loaded and return(ing) to the conceptual basics."<sup>2</sup> The Supreme Court has held that the notion of corroboration at common law simply requires that there be confirmation of a material particular of the evidence of the witness whose testimony needs to be corroborated. The key issue is whether the witness's credibility is strengthened by other pertinent evidence, regardless of whether such evidence also serves to implicate the accused.<sup>3</sup> In relation to this issue, the *Criminal Code*<sup>4</sup> and the *Canada Evidence Act*<sup>5</sup> contain statutory provisions which, by their very wording, restrict the scope for judicial reassessment of the corroboration requirement for the unsworn evidence of young children. The provision under the *Young Offenders Act*<sup>6</sup> affects all children's evidence which may be received, since under the Act the evidence of a child may be taken only under solemn affirmation.

## The Required Quality of Corroborative Evidence

Essentially, corroboration is evidence, independent of the witness whose testimony requires corroboration, that tends to show that the testimony of such witness is true. Where corroboration of a witness's testimony is required, the trier of fact must determine whether the witness is credible and, if so, whether the testimony of the witness is strengthened or confirmed (corroborated) by other evidence that is independent of the witness's testimony. Corroboration therefore serves to bolster the reliability of a witness whose testimony might otherwise (for a variety of reasons) be considered untrustworthy.<sup>7</sup>

### Evidence Which May Constitute Corroboration

Corroboration has proven to be an elusive concept in the law of evidence, and the various verbal formulae which judges have used to explain its nature are less instructive than the actual decisions they have reached in particular cases. Before considering corroboration in the context of sexual offences, two general observations should be borne in mind. First, where corroboration of a witness's testimony is required, it is for the judge to determine whether, as a matter of law, there is evidence which may constitute corroboration. It is for the *jury* to determine whether corroborative inferences should in fact be drawn.<sup>8</sup> Second, although corroboration is a general concept, whether particular facts may constitute corroboration is a situation-specific problem for the trial judge. Canadian courts have continually emphasized that what may afford corroboration in one case may not afford it in another; it all depends on the circumstances of the particular case.

The nature of potentially corroborative evidence in sexual cases may usefully be grouped into three broad categories: corroboration based on the *complainant's* condition or behaviour at the time of, or after, the sexual incident; corroboration based on the *accused's* condition or behaviour at the time of, or after, the sexual incident; and corroboration based on *other factors*.

### Corroboration Based on the Complainant's Condition or Behaviour at the time of, or after, the Sexual Incident

The following circumstances have been considered to constitute corroboration of a fact in issue, in the particular circumstances of each case:

- Torn clothing of the complainant and bruises found on the complainant.<sup>9</sup>
- The distressed condition of the complainant soon after the assault.<sup>10</sup>
- Medical evidence of injuries to the complainant's sexual organs.<sup>11</sup>
- Traces of the complainant's presence at the scene of the sexual assault.<sup>12</sup>
- The emotional state of the complainant on reporting the incident.<sup>13</sup>



- The screams and flight of the complainant from the scene of the sexual assault.<sup>14</sup>
- The complainant's pronounced emotional trauma in the days following a sexual assault.<sup>15</sup>

Evidence of the complainant's prompt complaint is *not* corroborative of his or her evidence against the accused, since it lacks the quality of independence.<sup>16</sup>

## Corroboration Based on the Accused's Condition or Behaviour at the time of, or after, the Sexual Incident

The following circumstances have been considered to constitute corroboration of a fact in issue, in the particular circumstances of each case:

- The flight of the accused after the sexual assault.<sup>17</sup>
- Traces of the accused's presence at the scene of the assault.<sup>18</sup>
- Inadequate denial or silence by the accused.<sup>19</sup>
- False statements by the accused, implying his guilty conscience.<sup>20</sup>
- The accused's attempt to bribe the complainant to drop the charges.<sup>21</sup>
- The accused's giving of false or contradictory testimony.<sup>22</sup>

The accused's failure to testify at trial may *not* be used for the purpose of drawing corroborative inferences.<sup>23</sup>

## Corroboration Based on Other Factors

A variety of other factors has been considered to constitute corroboration of the complainant's testimony, in the particular circumstances:

- The coincidence of the same type of venereal disease in the accused and the complainant.<sup>24</sup>
- Evidence of the accused's longstanding "guilty passion" for the complainant, coupled with evidence of opportunity.<sup>25</sup>
- Similar fact evidence concerning earlier assaults on other persons by the accused, in like circumstances.<sup>26</sup>
- Forensic evidence, such as the presence of semen on the complainant's underclothes.<sup>27</sup>

The mere fact that the accused had the opportunity to perpetrate the act may *not* be used for the purpose of drawing corroborative inferences. It does not sufficiently connect the accused with the crime, in the absence of other inculpatory circumstances.<sup>28</sup>

Prior to the amendments introduced in January, 1983, the *Criminal Code* stipulated that corroboration was required in order to convict a person accused

of certain sexual offences on the evidence of only one witness (usually the complainant).<sup>29</sup> The provision requiring corroboration in these circumstances was repealed in January, 1983<sup>30</sup> and section 246.4 of the *Criminal Code* provides that:

246.4 Where an accused is charged with an offence under section 150 (incest), 157 (gross indecency), 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

For the sexual offences to which this section applies, it is clear that corroboration of the complainant's testimony is no longer an issue. With respect to other sexual offences, however, especially the offences of buggery<sup>31</sup> and sexual intercourse with an under-age female,<sup>32</sup> the legal position concerning a complainant's uncorroborated testimony is less clear. Corroboration is still required for the offences relating to procuring<sup>33</sup> and the communication of venereal disease.<sup>34</sup>

The reforms introduced in January, 1983 did not affect the requirement of corroboration for young persons' testimony. Section 586 of the *Criminal Code* provides that:

586. No person shall be convicted of an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated in a material particular by evidence that implicates the accused.

The *Canada Evidence Act*<sup>35</sup> and provincial evidence acts<sup>36</sup> also contain provisions regarding the necessity for corroboration of the unsworn testimony of a child, and the *Young Offenders Act*<sup>37</sup> requires corroboration of all children's testimony. Although the January, 1983 amendments improve the evidentiary position of the *adult* sexual victim, they do little to improve that of the *child* sexual victim. Accordingly, complex legal issues concerning whether one child may corroborate the evidence of another child,<sup>38</sup> or whether it is dangerous to convict on the basis of a child's sworn testimony,<sup>39</sup> will continue to arise in trials of sexual offences involving young persons.

## Corroboration of Evidence of Children

That the testimony of adult sexual victims is no longer considered by Canadian law to be inherently untrustworthy is apparent from the enactment of section 246.4 of the *Criminal Code*, which explicitly removes the requirement of corroboration in most sexual cases, and which provides that the judge shall not instruct the jury that it is unsafe to convict in the absence of corroboration. It remains to examine the reasons why the law continues to treat the evidence of young children with caution and to scrutinize these reasons in light of the Committee's research findings.

In *Kendall v. The Queen*,<sup>40</sup> Mr. Justice Judson of the Supreme Court of Canada made the following observation:

The basis for the rule of practice which requires the judge to warn the jury of the danger of convicting on the evidence of a child, even when sworn as a witness, is the mental immaturity of the child. The difficulty is fourfold: 1. His capacity of observation. 2. His capacity of recollection. 3. His capacity to understand questions put and frame intelligent answers. 4. His moral responsibility.

With respect to these presumed testimonial frailties of children, the Committee's findings are illuminating (see Chapter 7, *Dimensions of Sexual Assault*, and Chapter 24, *Police Investigation*). In the National Police Force Survey, it was found that the vast majority of sexual assaults on children were considered to be "founded" by the police and that the reports of young children were typically perceived by the police to be both truthful and sufficiently detailed. It would appear that, at least in the context of child sexual abuse, the requirement of corroboration for a young child's testimony has traditionally been based on both untested and unfounded assumptions about the intrinsic reliability of children's evidence.

## Summary

The Committee considers that the current state of the law with respect to the corroboration of an "unsworn" child witness's testimony is unacceptable for the following reasons:

1. The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have come very close together in practice,<sup>41</sup> notwithstanding that the corroboration requirements are completely different depending on whether the child gives *sworn* or *unsworn* evidence. The Committee considers this an arbitrary distinction.
2. With respect to the unsworn evidence of a child, the statutory wording of section 586 of the *Criminal Code*, is different from the wording of section 16(2) of the *Canada Evidence Act*, in the absence of any indication whether the corroboration required by the sections differs depending on the legal context in which the issue of corroboration arises. Section 586 of the *Criminal Code* provides that the unsworn evidence of a child must be corroborated "in a material particular by evidence that implicates the accused" and section 16(2) of the *Canada Evidence Act* provides that such evidence must be corroborated by "some other material evidence". The different formulae are illustrative of the arbitrariness with which the evidence of young children has been treated by Canadian legal doctrine.
3. The Committee's research findings indicate that the assumptions on which the special requirement of corroboration for young children's evidence are based, are largely unfounded.



4. A special legal requirement for corroboration of a young child's evidence is unsound in principle. The Committee agrees with the "common sense" approach to witness credibility espoused by Mr. Justice Dickson of the Supreme Court of Canada (now Chief Justice of Canada):<sup>42</sup>

Rather than attempting to pigeon-hole a witness into a category and then recite a ritualistic incantation, the trial judge might better direct his mind to the facts of the case, and thoroughly examine all the factors which might impair the worth of a particular witness. If, in his judgment, the credit of the witness is such that the jury should be cautioned, then he may instruct accordingly. If, on the other hand, he believes the witness to be trustworthy, then . . . no warning is necessary.

Accordingly, the Committee recommends:

1. That there be no statutory requirement for the corroboration of an "unsworn" child's evidence. The implementation of this recommendation would involve the repeal of section 586 of the *Criminal Code*, section 16(2) of the *Canada Evidence Act*, section 61(2) of the *Young Offenders Act*, and corresponding sections of provincial evidence acts.
2. That the statutory corroboration requirements in sections 195(3) [procuring] and 253(3) [communicating a venereal disease] of the *Criminal Code* be repealed.
3. For greater certainty, that the *Criminal Code* be amended to provide that the "corroboration not required" provision in section 246.4 of the *Criminal Code* applies to *all* sexual offences, and not only to those offences currently listed in section 246.4.

These reforms would place the testimony of a child in no better or worse position than that of an adult, which the Committee believes is the correct legal approach in principle. The cogency of a given child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility or presumed unreliability, as is currently the case. The Committee endorses the comments of the *Law Reform Commission of Canada* in this regard, namely, that judges and juries "have the necessary experience and common sense to evaluate the testimony before them, and in doing so to take into account such matters as its source and the fact that it is unsupported by other evidence."<sup>43</sup>

As the *Law Reform Commission of Canada* has further argued:<sup>44</sup>

There is no evidence to suggest that [triers of fact, whether a judge or jury] are more likely to be misled by the evidence of accomplices, the victims of certain sexual offences, or young children than by any other witness.

Nor would the reforms recommended by the Committee be inconsistent with the accused's right to make a full answer and defence to the charges

against him or her. The accused retains his or her traditional rights of cross-examination and of address to the jury. Further, the Crown bears the strict onus of proving its case beyond a reasonable doubt.

## References

### Chapter 15: Corroboration

- <sup>1</sup> See, e.g., *Murphy and Butt v. The Queen*, [1977] 2 S.C.R. 603; *Warkentin v. The Queen*, [1977] 2 S.C.R. 355; *Vetrovec v. The Queen* (1982), 67 C.C.C. (2d) 1 (S.C.C.).
- <sup>2</sup> *Vetrovec v. The Queen*, [1982], 1 S.C.R. 811 at 819 per Dickson J.
- <sup>3</sup> *Murphy and Butt v. The Queen*, *supra*, note 1.
- <sup>4</sup> *Criminal Code*, R.S.C. 1970, c. C-34, s. 586.
- <sup>5</sup> *Canada Evidence Act*, R.S.C. 1970, c. E-10, s. 16(2).
- <sup>6</sup> *Young Offenders Act*, S.C. 1980-81-82, c. 110, s. 61(2).
- <sup>7</sup> *Phipson on Evidence* (11th ed. 3rd Supp. 1974) at para 1567.
- <sup>8</sup> *Taggart v. The Queen* (1980), 13 C.R. (3d) 179 (Ont. C.A.).
- <sup>9</sup> *R. v. Harrison* (1956), 23 C.R. 387 (Ont. C.A.).
- <sup>10</sup> *R. v. Redpath* (1962), 46 Cr. App. R. 319 (C.C.A.).
- <sup>11</sup> *R. v. Huffman* (1958), 28 C.R. 5 (Ont. C.A.).
- <sup>12</sup> *R. v. Creemer and Cormier*, [1968] 1 C.C.C. 14 (N.S.C.A.).
- <sup>13</sup> *R. v. Lindsay* (1970), 24 C.R.N.S. 105 (Ont. C.A.).
- <sup>14</sup> *Childs v. The Queen* (1958), 122 C.C.C. 126 (N.B.C.A.).
- <sup>15</sup> *R. v. Basken* (1974), 28 C.R.N.S. 359 (Sask. C.A.).
- <sup>16</sup> *Thomas v. The Queen*, [1952] 2 S.C.R. 344.
- <sup>17</sup> *R. v. Bondy* (1958), 28 C.R. 342 (Ont. C.A.).
- <sup>18</sup> *R. v. LaRochelle* (1952), 104 C.C.C. 349 (N.S.S.C.).
- <sup>19</sup> *R. v. Christie*, [1914] A.C. 545 (H.L.).
- <sup>20</sup> *Budin v. The Queen* (1981), 20 C.R. (3d) 86 (Ont. C.A.).
- <sup>21</sup> *R. v. Mazza* (1975), 24 C.C.C. (2d) 508 (Ont. C.A.), *aff'd sub nom. Mazza v. The Queen* (1978), 40 C.C.C. (2d) 134 (S.C.C.).
- <sup>22</sup> *R. v. Collerman* [1964], 3 C.C.C. 195 (B.C.C.A.).
- <sup>23</sup> *Kolnberger v. The Queen*, [1969] S.C.R. 213.
- <sup>24</sup> *R. v. Jones* (1939), 27 Cr. App. R. 33 (C.C.A.).
- <sup>25</sup> *R. v. Burr* (1906), 12 C.C.C. 103 (Ont. C.A.).
- <sup>26</sup> *R. v. Lawson* (1971), 3 C.C.C. (2d) 372 (Alta. C.A.).
- <sup>27</sup> *Warkentin v. The Queen*, *supra*, note 1.
- <sup>28</sup> *Burbury v. Jackson*, [1917] 1 K.B. 16.
- <sup>29</sup> The former section 139 (1) of the *Criminal Code*, R.S.C. 1970, c. C-34, provided that no accused could be convicted of the following offences on the evidence of only one witness, unless the evidence of that witness was corroborated in a material particular by evidence that implicates the accused:
- s. 148 — sexual intercourse with a feeble-minded female
  - s. 150 — incest
  - s. 151 — seduction of a female between 16 and 18
  - s. 152 — seduction under promise of marriage



s. 153 — sexual intercourse with a step-daughter, foster daughter, or female ward, or with a female employee under 21

s. 154 — seduction of a female passenger on board a vessel

s. 166 — parent or guardian procuring defilement

<sup>30</sup> *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82-83, c. 125, s. 19.

<sup>31</sup> In *R. v. Gendreau* (1980), 3 Man. R. (2d) 245, a case involving charges of buggery and gross indecency, the Manitoba Court of Appeal considered that the following charge to the jury was a proper one:

“Corroboration, therefore, is not strictly necessary. If the complainant is believed and his evidence is sufficient to sustain the charges, then a conviction should be entered. On the other hand it is settled law that it is dangerous to convict on the uncorroborated evidence of the complainant in sexual offences.”

See also *R. v. Cullen* (1975), 26 C.C.C. (2d) 79 (B.C.C.A.).

<sup>32</sup> Section 146 of the *Criminal Code* was an offence to which the statutory “corroboration warning rule” applied, prior to the repeal of this provision by the *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8. On the current status of the common law “corroboration warning rule” in this respect, see:

*R. v. Camp* (1977), 36 C.C.C. (2d) 511 (Ont. C.A.);

*R. v. Daigle* (1977), 37 C.C.C. (2d) 386 (N.B.C.A.);

*R. v. Firkins* (1977), 37 C.C.C. (2d) 227 (B.C.C.A.);

*R. v. Cook* (1979), 9 C.R. (3d) 85 (Ont. C.A.); and

*R. v. Riley* (1978), 42 C.C.C. (2d) 437 (Ont. C.A.).

<sup>33</sup> *Criminal Code*, R.S.C. 1970, c. C-34, s. 195(3).

<sup>34</sup> *Ibid.*, s. 253 (3).

<sup>35</sup> *Canada Evidence Act*, R.S.C. 1970, c. E-10, s. 16(2).

<sup>36</sup> *Supra*, at note 6.

<sup>37</sup> See *supra*, Chapter 14, “The Evidence of Children”, notes 18-21.

<sup>38</sup> The current state of Canadian law with respect to the “mutual corroboration” of children’s evidence is as follows:

(i) An unsworn child may not corroborate another unsworn child: *Paige v. The King* (1948), 92 C.C.C. 32 (S.C.C.).

(ii) An unsworn child may not corroborate a sworn child: *Paige v. The King, supra*.

(iii) A sworn child may corroborate another sworn child: *R. v. Taylor* (1970), 75 W.W.R. 45 (Man. C.A.).

(iv) A sworn child may corroborate an unsworn child: *R. v. Pottle* (1978), 49 C.C.C. (2d) 113 (Nfld. C.A.).

<sup>39</sup> *Kendall v. The Queen*, [1962] S.C.R. 469; *R. v. Taylor* (1970), 75 W.W.R. 45 (Man. C.A.); *R. v. Parkin*, [1922] 1 W.W.R. 732 (Man. C.A.); *R. v. Burdick* (1975), 27 C.C.C. (2d) 497 (Ont. C.A.); and *R. v. Tennant and Naccarato* (1975) 23 C.C.C. (2d) 80 (Ont. C.A.).

<sup>40</sup> *Ibid.*, at 473.

<sup>41</sup> See, e.g., *Fletcher v. The Queen* (1982), 1 C.C.C. (3d) 370 (Ont. C.A.).

<sup>42</sup> *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811 at 823.

<sup>43</sup> Canada. Law Reform Commission of Canada, *Report on Evidence* (Ottawa: Information Canada, 1977) p. 108.

<sup>44</sup> *Ibid.*



## Chapter 16

# Complaints by Victims

Until the enactment of Bill C-127 in January, 1983, the admissibility of complaints made by victims of sexual assaults was governed by the common law doctrine of “recent complaint.”<sup>1</sup> Historically, the common law took a skeptical view of the testimony of victims of sexual offences, particularly of women who made allegations of rape.<sup>2</sup> Where a victim of a sexual offence failed to complain of the incident at the first “reasonable” opportunity, the trier of fact was entitled and even encouraged<sup>3</sup> to infer that the complainant’s allegation against the accused was either totally or substantially untrue.<sup>4</sup> In order to enable the complainant to rebut these prejudicial inferences, a practice developed which allowed the Crown to prove that the victim had made a complaint and to adduce evidence concerning the details of that complaint,<sup>5</sup> provided certain conditions were met. Although the particulars of the complaint could be proved, they could not be considered as evidence of the facts disclosed by the complaint, but only as evidence which confirmed the complainant’s credibility and, where consent was in issue, of the absence of the complainant’s consent.<sup>6</sup> Further, evidence so introduced could not be used to corroborate any aspect of the Crown’s case.<sup>7</sup>

The Supreme Court of Canada summarized the trial judge’s responsibilities in dealing with this issue as follows:<sup>8</sup>

Before admitting a complaint as evidence, the Judge shall hold a *voir dire*<sup>9</sup> to determine:

- Whether there is some evidence which if believed by the *trier of fact* (in this case the jury) would constitute a complaint.
- That the complaint was not elicited by questions of a “leading and inducing or intimidating character”.<sup>10</sup>
- That it was “made at the first opportunity after the offence which reasonably offers itself.”<sup>11</sup>

It has also been held that recent complaint evidence could only be admitted if the complainant testified at trial and that, where the details of the complaint were sought to be elicited from a witness other than the complainant (for example, from the recipient of the complaint), such details were properly introduced only after the complainant had testified.<sup>12</sup>



## Amendments Introduced in January, 1983

Section 246.5 of the *Criminal Code* provides:

246.5 The rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated.

Accordingly, the common law doctrine of “recent complaint” in sexual assault cases is abrogated, and the admissibility of complaint evidence will henceforward be governed by the general evidentiary rules relating to previous statements of a witness.

That the victim made a complaint will invariably be brought out during the Crown’s initial examination of its witnesses. The details of that complaint, however, will be inadmissible unless:

1. The accused alleges or insinuates that the complainant’s testimony at trial is a “recent fabrication”, in which case the Crown can introduce the complainant’s previous consistent statement of complaint and restore the complainant’s credibility.<sup>13</sup>
2. There is an inconsistency between the complainant’s testimony at trial and the complainant’s previous statement of complaint, in which case defence counsel can introduce the previous inconsistent statement and impeach the complainant’s credibility.<sup>14</sup>
3. The victim’s complaint is otherwise admissible under an exception to the hearsay rule, for example, as a “spontaneous exclamation” or “excited utterance.”<sup>15</sup>

The Committee considers that no adverse legal inferences concerning a sexual victim’s credibility should be drawn because the victim did not promptly complain to someone after the sexual assault, and to that extent considers that the abrogation of the “recent complaint” doctrine in sexual assault cases is an appropriate legal reform. The Crown will continue to be able to adduce evidence concerning the making of the complaint, and details of the complaint may also be admissible under the general rules of evidence relating to previous consistent statements.

The possible circumstances which might deter a victim from promptly reporting a sexual assault are vastly more complex than those pertaining to the reporting of other sorts of crime. Young children may not even be aware that something aberrant has been done to them, or may not be sufficiently verbal to articulate their complaint in a manner recognized by the law. The offender, who is often a person the child trusts, may have told the child that their joint sexual activity is a “special secret” they share, or may have threatened the child with harm or punishment if the child tells anyone. Where the sexual assault is perpetrated by a family member, the victim may understandably wish to avoid the dire consequences which disclosure may have on his or her

family. Alternatively, the victim may fear being accused of somehow “provoking” the sexual assault, and of having to defend his or her prior sexual conduct and general reputation at subsequent legal proceedings.

The findings of the National Population Survey (see Chapter 6, *Occurrence in the Population*) document the reasons why most persons who were victims of sexual offences committed against them when they were children or youths did not seek assistance. The following case study, taken from the National Police Force Survey, is illustrative of the often compelling circumstances which sometimes deter young sexual victims from making a prompt complaint of the incident.

A complaint was lodged by the suspect’s wife in relation to alleged acts of sexual intercourse and other sexual acts committed against the wife’s 12 year-old daughter (the suspect’s step-daughter). According to the wife’s statement, the suspect had a history of violence, had assaulted her on a number of occasions and once threatened to kill her with a rifle. The wife’s statement alleged that her daughter first gave an indication that the suspect had been sexually abusing her when the daughter was three years-old. According to the statement:

One night I was putting the girls to bed when D. started to cry. I asked and she said I can’t tell you because Dad would give me a licking. . . [on being questioned further] she said Dad has been playing with my bummy — I asked which one and she indicated it was her vagina. She said he lifted up my nightie, sat me on his knee, lifted me up and down and put his finger in my vagina. . .

The wife accepted the suspect’s denials of wrongdoing, but said she continued to be suspicious. During the daughter’s early adolescence, the suspect was alleged to have forced her to have intercourse several times over a period of about a year. About three months after the last of these incidents, the mother became suspicious again because of the “hickies” which the daughter was observed to have. On being questioned, the daughter broke down and related the whole story to her mother.

In her statement, the daughter stated that she delayed in telling her mother of the suspect’s activities for fear of being blamed, hated, and possibly even killed for having had sex with her step-father.

Although the Committee agrees with the abrogation of the “recent complaint” doctrine effected in January, 1983, it should be noted that section 246.5 of the *Criminal Code* states only that the “rules relating to evidence of recent complaint in *sexual assault cases* are hereby abrogated.”<sup>16</sup> On its face, the section would appear to abrogate the recent complaint doctrine only with respect to the “sexual assault” offences in sections 246.1, 246.2, and 246.3 of the *Criminal Code*. At common law, however, the doctrine of recent complaint applied to all sexual offences, whether or not the complainant’s consent was in issue. Further, a number of sexual offences against young persons do not require that the child be “assaulted” in the legal sense, for example, incest, gross indecency and the unlawful sexual intercourse offences. The credibility of a child victim of one of these offences may, accordingly, still be impugned

under the recent complaint doctrine if the child does not complain of the incident at what the court considers to be the first reasonable opportunity.<sup>17</sup> The Committee considers this to be wholly unsatisfactory.

## Summary

The Committee recommends that section 246.5 of the *Criminal Code* be amended to provide that:

the rules relating to evidence of recent complaint are abrogated with respect to *all* sexual offences.

Further, the Committee considers that the remarks the child or young person makes on reporting the incident often constitute the most cogent possible evidence, and should not be excluded from the trier of fact's consideration. In the Committee's judgment, this form of evidence should be admissible on the basis of a statutory exception to the hearsay rule. The rules concerning hearsay evidence are discussed in Chapter 17.

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## References

### Chapter 16: Complaints by Victims

- <sup>1</sup> See generally the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 355-59; and MacCrimmon, *Consistent Statements of a Witness* (1979), 17 Osgoode Hall L.J. 285, esp. at 304-14.
- <sup>2</sup> Blackstone, IV *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769) at 211; and Hale, I *The History of the Pleas of the Crown*, (London: Sollom Emlyn, 1800) c. 58 at 635.
- <sup>3</sup> Where the Crown failed to show that the complainant made a complaint at the first reasonable opportunity, not only was the complaint rendered inadmissible, but the trial judge was required to comment on this failure. If the complainant's consent was at issue, the trial judge was required to instruct himself or the jury that an inference inconsistent with the complainant's evidence of no consent was to be drawn: *R. v. Walker* (1980), 58 C.C.C. (2d) 178 (Que. C.A.); *R. v. Boyce* (1974), 28 C.R.N.S. 336 (Ont. C.A.); *R. v. Kistendey* (1975), 29 C.C.C. (2d) 382 (Ont. C.A.); *R. v. Davidson* (1975), 24 C.C.C. (2d) 161 (Ont. C.A.).
- <sup>4</sup> See *R. v. Kistendey* and *R. v. Davidson*, *ibid.*
- <sup>5</sup> *R. v. Lillyman*, [1896] 2 Q.B. 167; *R. v. Osborne*, [1905] 1 K.B. 551.
- <sup>6</sup> *R. v. Lillyman*, *ibid.*
- <sup>7</sup> *Thomas v. The Queen*, [1952] 2 S.C.R. 344; *R. v. Plantus* (1957), 118 C.C.C. 260 (Ont. C.A.); *R. v. Cross*, [1970] 1 O.R. 693 (C.A.); *R. v. Deslaurier* (1977), 36 C.C.C. (2d) 327 (Ont. C.A.).  
At one time in Canadian law, however, a prompt complaint did have corroborative potential. See, e.g., *R. v. Bowes* (1909), 20 O.L.R. 111 (C.A.); *Shorten v. The King* (1918), 57 S.C.R. 118; and *R. v. Auger* (1929), 52 C.C.C. 2 (Ont. C.A.).
- <sup>8</sup> *Timm v. The Queen* [1981], 2 S.C.R. 315 at 337 per Lamer J.
- <sup>9</sup> A *voir dire* (sometimes called a trial within the trial) is a hearing conducted by the trial judge specifically to determine some fact on which depends the admissibility of evidence. See Schiff, *Evidence in the Litigation Process* (Toronto: Carswell, 1978) at 900.
- <sup>10</sup> See *R. v. Osborne*, *supra*, note 5; *Shorten v. The King* *supra*, note 7; *R. v. Lebrun*, [1951] O.R. 387 (Ont. C.A.); *R. v. Kulak* (1979), 46 C.C.C. (2d) 30 (Ont. C.A.); *R. v. Waddell* (1975), 28 C.C.C. (2d) 315 (B.C.C.A.); *R. v. Caldwell* (1974), 10 N.S.R. (2d) 187 (C.A.) and *R. v. Bell* (1973), 14 C.C.C. (2d) 225 (N.S.C.A.).
- <sup>11</sup> See *R. v. Creemer and Cormier* (1967), 1 C.R.N.S. 146 (N.S.C.A.); *R. v. Hall* (1927), 31 O.W.N. 451 (C.A.); *R. v. Bodechon* (1964), 50 M.P.R. 184 (P.E.I.C.A.); *R. v. MacNeil* (1976), 16 N.S.R. (2d) 366 (C.A.); *R. v. Hickey* (1980), 31 N.B.R. (2d) 147 (Q.B.); and *R. v. Jones*, [1945] 4 D.L.R. 515 (P.E.I.C.A.).
- <sup>12</sup> *Timm v. The Queen*, *supra*, note 8; *R. v. Cook* (1979), 9 C.R. (3d) 85 (Ont. C.A.); *R. v. Gillingham* (1981), 65 C.C.C. (2d) 42 (N.S.C.A.); *R. v. Lebrun*, *supra*, note 10.
- <sup>13</sup> See generally the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 1 at 351-82; and MacCrimmon, *supra*, note 1, esp. at 295-304.
- <sup>14</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *ibid.*; MacCrimmon, *ibid.*
- <sup>15</sup> *Report of Federal/Provincial Task Force on Uniform Rules of Evidence*, *ibid.* at 233-42; Cross, *supra*, note 2 at 575-93; and Bill S-33 (the proposed *Canada Evidence Act*, 1982, 1980-81-82 (32nd Parl. 1st Sess.) ss. 115-120.).
- <sup>16</sup> Emphasis added.

<sup>17</sup> See, e.g., *R. v. Lillyman*, *supra*, note 5; *R. v. Osborne*, *supra*, note 5; *R. v. Camelleri*, [1922] 2 K.B. 122; *R. v. Chenier* (1981), 63 C.C.C. (2d) 36 (Que. C.A.); *R. v. Budin* (1981), 58 C.C.C. (2d) 352 (Ont. C.A.), leave to appeal to S.C.C. refused (1981), 58 C.C.C. (2d) 352n; and *R. v. Walters* (1980), 53 C.C.C. (2d) 119 (Ont. C.A.).

## Chapter 17

# Hearsay

Hearsay may be defined as a statement, other than one made by a person while testifying at a proceeding, that is offered in evidence to prove the truth of the matters asserted in the statement.<sup>1</sup> As a general rule, a hearsay statement is inadmissible in evidence to prove the truth of the matters asserted therein. Although the exclusion of hearsay evidence has been justified on several grounds,<sup>2</sup> the central justification is that the person who originally made the statement cannot be cross-examined to determine the reliability of his or her observations and the meaning which the statement was intended to convey.<sup>3</sup>

At common law, exceptions to this exclusionary rule were established in order to render admissible certain forms of hearsay evidence where, in the circumstances, there was a compelling need to do so and the evidence was thought to have strong circumstantial guarantees of trustworthiness.<sup>4</sup> The nature and extent of these exceptions are highly significant in the context of child sexual abuse, particularly where the child is too young to testify under the current rules of testimonial competency. Where a child is deemed incompetent to testify, statements made by the child indicating or alleging that someone has sexually abused him or her will often be inadmissible in evidence to prove that the child's assertions are true, notwithstanding that the admissibility of the statements for this purpose will often be crucial to the outcome of subsequent legal proceedings. The following are examples of statements made by child sexual victims which under current doctrine would be held inadmissible to prove the truth of the matters asserted in the statements:

- A three year-old asks her daddy if milk comes out of his pee-pee. He says no, and then tells his wife. She later asks her daughter about it, who replies, "Well milk comes out of Susie's dad's pee-pee and it tastes yucky."<sup>5</sup>
- A four year-old boy sits in front of the television drinking soda pop. His dad sees that he is moving the bottle in and out of his mouth in a manner imitating fellatio. His dad asks him what he is doing, and the boy replies that this is what Uncle Joe taught him to do with his "banana".<sup>6</sup>

The following case study, taken from the National Police Force Survey, is also illustrative of how relevant assertions made by a child sexual victim would



be considered inadmissible hearsay statements under current legal doctrine in Canada.

The victim, a three year-old girl, aroused her parents' suspicions when she announced to them that she was not going to play the "bum game" with A. anymore. The suspect, A., a 19 year-old male, had intermittently been the child's baby-sitter for about a year. The victim was reluctant to disclose the nature of the "bum game" because the suspect had told her not to do so, but she eventually revealed that the game involved mutual oral sex. The incidents were alleged to have occurred on several occasions during the past year.

The suspect denied all allegations and contended that the child was overly imaginative. The suspect suggested that the child might have gained her knowledge of oral sex by watching her parents perform such acts, or from interaction with local children, and that her allegation against him was fabricated. The suspect refused to submit to a polygraph test.

The police occurrence report concluded as follows: "In view of the tender age of the victim and without corroborative evidence, no charges will be laid and this file is concluded here."

The balance of this chapter reviews the exceptions to the hearsay rule that are especially pertinent to investigations of child sexual abuse.

## Current Exceptions to the Hearsay Rule

The most important exceptions to the hearsay rule<sup>7</sup> in the context of child sexual abuse are those pertaining to records made in the course of a business or professional duty; confessions or admissions by an accused; excited utterances; and statements indicating the declarant's present bodily feeling or state of mind.

### Records Made Pursuant to a Business or Professional Duty

In *Ares v. Venner*,<sup>8</sup> the Supreme Court of Canada broadened the common law exception to the hearsay rule pertaining to records made pursuant to a business or professional duty.<sup>9</sup> The case involved an allegation of negligence against the respondent, a physician. The main issue concerned the admissibility of notes (technically hearsay) made by nurses who attended the appellant while he was receiving care in a hospital. In creating this new exception, the Court stated:<sup>10</sup>

Hospital records, including nurses' notes, made *contemporaneously* by someone *having a personal knowledge of the matters then being recorded* and *under a duty to make the entry or record* should be received in evidence as *prima facie* proof of the facts stated therein. This should, in no way, preclude a party wishing to challenge the accuracy of the records or entries from doing so. Had the respondent here wanted to challenge the accuracy of the nurses' notes, the nurses were present in court and available to be called as witnesses if the respondent had so wished.

The decision of the Supreme Court in *Ares v. Venner*, although referring explicitly only to hospital records, has been taken to settle the law with respect to records of other “businesses” made in analogous circumstances,<sup>11</sup> and is directly pertinent to investigations of child sexual abuse. Hospital, police and social work records kept pursuant to cases of child sexual abuse may be admissible in evidence to prove the truth of the assertions contained therein, without it being necessary that the maker or makers of the entry testify orally concerning it.<sup>12</sup> Although the potential ambit of this common law exception to the hearsay rule is unclear,<sup>13</sup> it is unquestionably germane to the official records (and to the record-keeping practices) of helping agencies that routinely deal with cases of child sexual abuse.

Apart from these developments at common law, most jurisdictions in Canada have enacted statutory provisions mandating the admission into evidence of “business records”<sup>14</sup> and “official medical reports”.<sup>15</sup> For example, it has been held that a recognized Children’s Aid Society is a “business” within the business records exception to the hearsay rule. Accordingly, a record made by a social worker as part of his or her investigatory role is admissible in evidence to prove the truth of the matters asserted in the record, notwithstanding that the social worker is not called as a witness.<sup>16</sup>

## Admissions or Confessions

*Admissions.* An admission is a statement by, or attributable to, a party which is adverse to his or her case.<sup>17</sup> Admissions have traditionally been viewed as an exception to the hearsay rule, on the basis that a statement which is adverse to the legal position of the person who makes it may be presumed to be true.<sup>18</sup> For example, if, after an alleged sexual assault on a teenager, the accused says to his friend, “I didn’t mean to be so rough — things just got out of hand,” this statement constitutes an admission which can be admitted in evidence against the accused notwithstanding that the accused does not himself testify.

Where an accused makes an admission to a person other than a “person in authority,”<sup>19</sup> the admissibility of that statement in evidence against him or her is clear. More problematic, however, are cases in which an accused’s conduct after the event may arguably be interpreted as an implied admission of culpability on his or her part.<sup>20</sup> In *R. v. Christie*,<sup>21</sup> the accused was charged with indecently assaulting a five year-old boy. The boy’s mother and a police constable were examined as Crown witnesses. The constable testified that, after receiving certain information, he went to a field and saw a number of persons standing there, including the accused, the boy and the boy’s mother; that she made a complaint to him (the constable) that a man had assaulted her son; and that the boy then said to his mother, “That is the man, mum.” The constable then asked the boy which man he meant, whereupon the boy went up to the accused, touched him on the sleeve of his coat, and said, “That is the man.” The boy was then asked, “What did he do to you?”, in reply to which the boy

gave full particulars of the indecent assault. After the boy's narration, the accused merely stated, "I am innocent."

The House of Lords held that the accused's reply to the boy's allegations was properly admitted and declared that there is no rule of law that statements made in the presence of an accused may only be received in evidence if a foundation for their admission has first been laid by facts from which, in the judge's opinion, a jury might reasonably infer that the accused had implicitly accepted the statements as his own, in whole or in part.<sup>22</sup> It is the function of the trier of fact to determine whether the accused's words, actions, conduct or demeanour at the time the statement is made amounts to an acceptance by him of the statement in whole or in part, and hence as an admission of culpability.<sup>23</sup> This principle has been approved in Canada on several occasions<sup>24</sup> and has direct application to cases of child sexual abuse.<sup>25</sup> The following case study is taken from the National Police Force Survey.<sup>26</sup>

The grandmother of the victim (a three year-old girl) found her "playing with herself"; the three year-old was apparently masturbating. The grandmother admonished the girl not to do such things, whereupon the girl replied that it was "O.K. because B. (the suspect) plays with me that way." A child welfare agency was promptly notified.

The suspect, B., a 16 year-old male, subsequently admitted to the grandmother that he had assaulted the girl in the manner indicated, and that he had made the girl play with his penis. The incidents occurred during periods when the suspect was babysitting the little girl; the suspect admitted to the grandmother that he had performed similar acts with the young child on several occasions.

*Confessions.* A confession is a form of criminal admission and is accordingly admissible as an exception to the hearsay rule.<sup>27</sup> Where, however, an accused makes a statement (whether inculpatory or exculpatory)<sup>28</sup> to a "person in authority,"<sup>29</sup> the trial judge must hold a *voir dire* to determine whether the accused's statement was made voluntarily. In the words of Lord Sumner in *Ibrahim v. The King*:<sup>30</sup>

It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale.

The so-called "confessions rule" is inextricably bound up with the accused's right not to incriminate himself and with "the clear common law principle that the Crown must establish its case without the assistance of the accused."<sup>31</sup>

The practical application of the confessions rule is well illustrated by the Supreme Court of Canada decision in *Powell v. The Queen*.<sup>32</sup> The accused was charged with one count of indecent assault on a female and one count of assault causing bodily harm. The complainant, G., and her common law husband, P., were walking on a street in the city in which they resided, accompanied by P.'s dog. The dog got loose and, as G. was pursuing the dog into a



parking lot, she was grabbed from behind and thrown to the ground. Her attacker then kicked her in the face and stomach and tried to pull her slacks down.

P. eventually caught up with G., and saw a man standing over her with his hand raised, as if to strike her. P. gave chase, lost sight of the man he was pursuing, but later caught sight of a man who he was sure was the attacker. The alleged assailant was forcibly restrained and the police were summoned.

The accused first denied having been in the area or having been with any woman. Later, in the police cruiser, and in response to a question by a police officer, the accused said that he had been helping the woman. Still later, the accused reverted to his earlier complete denial.

At trial, no *voir dire* was held to determine the voluntariness of the accused's statement that he had been helping the woman. On the accused's appeal from conviction, the Manitoba Court of Appeal held that, although the trial judge's failure to hold a *voir dire* on the issue of voluntariness may have been in error, no substantial wrong or miscarriage of justice had resulted thereby.

On the accused's further appeal to the Supreme Court of Canada, Mr. Justice de Grandpre, in delivering the judgment of the Court, stated:<sup>33</sup>

I am unable to accede to the proposition that if a trial Judge directs himself to the question of the voluntariness of a statement and is satisfied on the whole of the evidence of the guilt of the accused, there is no need for a *voir dire* . . . The onus at all times remains with the prosecution to establish that any statement by an accused offered in evidence against him is voluntary in the fullest sense of the word, and that onus was not discharged here . . . The admission of the statement without a *voir dire* was a fundamental error which may have effected the outcome of the trial.

Accordingly, the Court allowed the accused's appeal, quashed the conviction and ordered a new trial.

## Excited Utterances

An "excited utterance" is a statement made by a person while he or she was under the stress of nervous excitement caused by witnessing a startling event. In order for a declarant's excited utterance to be admitted into evidence as an exception to the hearsay rule, the event giving rise to the statement must have been sufficiently startling to suspend the declarant's reflective faculties, and the statement must have been uttered while the declarant was under the influence of the startling event.<sup>34</sup> These circumstances are thought to ensure the trustworthiness of the statement; on the other hand, such evidence is necessary because it is considered a more reliable source of proof than the declarant's subsequent testimony.<sup>35</sup>

The declarant need not be unavailable as a witness in order for this hearsay exception to operate. Both the declarant and another person who heard the declarant's statement may testify concerning the "excited utterance".<sup>36</sup> For example, if, immediately after being sexually assaulted, a girl makes an hysterical telephone call to the police wherein she indicates the nature of the

assault and the identity of her assailant, both the girl and the police officer who took the call may testify concerning the girl's telephone statement.<sup>37</sup> Alternatively, the statement of a three year-old boy, who runs down the stairs and exclaims to his mother, "Uncle Bob pulled my pee-pee, and it hurts!", would constitute an excited utterance to which the mother could testify, notwithstanding that her son fails to qualify as a witness.<sup>38</sup>

## Statements Indicating the Declarant's Present Bodily Feeling or State of Mind

Statements by a declarant indicating his or her present physical condition or state of mind constitute a further exception to the hearsay rule. For example, a four year-old boy might tell his family doctor, "My bum hurts," and indicate the onset of the pain, without offering an explanation as to its cause. This statement, given in evidence by the doctor as part of his testimony, could form part of the Crown's case against an accused charged with buggery.<sup>39</sup> Alternatively, a child might make statements to a social worker which reveal the child's present emotional state and his or her express preference for one dispositional outcome over another.<sup>40</sup>

## Summary

Hearsay evidence is dealt with extensively in Bill S-33<sup>41</sup> and, in general, the Committee considers that the treatment of hearsay evidence in this proposed legislation is adequate. Even so, there is one form of crucially relevant evidence in the context of child sexual abuse for which these proposals do not explicitly provide. An out-of-court statement made by a young child which indicates that the child may have been sexually abused is inadmissible hearsay unless the circumstances of the statement fall within one of the established exceptions to the hearsay rule. Given the nature of sexual abuse of young children, however, such statements typically will not fall within any of the established or proposed hearsay exceptions.<sup>42</sup> A young child often is not aware that something aberrant is being done to him or her, and consequently is unlikely to make an "excited utterance" about the incident. Alternatively, a child who is aware that "something is wrong" may be prevented from telling anyone because of threats, fear of reprisals, admonishments of secrecy on the part of the offender, or other pressures. When the child does eventually tell someone, the lapse of time will render the child's statement inadmissible for the purpose of proving the truth of the assertions made in it. **In the Committee's view, neither the exceptions to the hearsay rule at common law, nor the statutory proposals of Bill S-33, offer sufficient opportunities for the out-of-court statements of young children to be admitted in evidence for the purpose of proving that the matters asserted in those statements are true.**

**The exceptions to the hearsay rule at common law have traditionally been justified on the dual bases of necessity and presumed trustworthiness. That the**

admission into evidence of a young child's express or implied allegation of sexual abuse is necessary in order to reach a proper and just legal determination can scarcely be doubted. Where the child has made such a statement but is deemed legally incompetent to testify in court, the trier of fact will often be precluded from hearing potentially the most relevant evidence in the case, namely, the content of the child's statement. Alternatively, where the child is competent to testify, several considerations combine to justify, in appropriate cases, the narration of the child's statement by the person who received it. As the Wisconsin Supreme Court stated in a 1974 case:<sup>43</sup>

A young child may be unable or unwilling to remember (as here) all the specific details of the assault by the time the case is brought to trial; or be unwilling to testify, or at least inhibited in doing so from a feeling of fear or shame, or as a result of the strangeness of the courtroom surroundings, particularly with a jury and perhaps members of the general public present. The desirability of avoiding the necessity of forcing a young child to testify to such matters at all has been noted, particularly when the defendant is (as here) a parent or occupies some other close relationship to the child.

Further, where the child does testify in court, his or her perceived credibility as a witness will be a critical factor in the outcome. Allowing the recipient of the child's statement to testify concerning its content would enable the trier of fact to assess the child's credibility on a more realistic basis.

Whether a young child's express or implied allegation of sexual abuse should be assumed to be trustworthy is more problematic. To consider only two of the several factors which operate in this context:<sup>44</sup>

1. A young child is unlikely to verbalize about a form of sexual activity that is foreign to his or her personal experience.<sup>45</sup> As one writer put it, "[t]he child who can describe an adult's erect penis and ejaculation has had direct experience with them."<sup>46</sup>
2. On the other hand, a child's limited verbal capacity may sometimes lead to real ambiguities in the meaning which the child intended his or her statement to convey.<sup>47</sup>

In the Committee's view, whether a child's previous statements relating to his or her sexual abuse should be admitted in evidence as an exception to the hearsay rule is best approached on a case-by-case basis. An inflexible rule, whether inclusionary or exclusionary, would fail to take into account the wide variability of circumstances from one case to the next, and would be wrong in principle.

**The Committee recommends that the *Canada Evidence Act*, each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure* be amended in order to provide that:<sup>48</sup>**

1. A previous statement made by a child when under the age of 14 which describes or refers to any sexual act performed with, on, or in the presence of the child by another person.
2. Is admissible to prove the truth of the matters asserted in the statement.



3. Whether or not the child testifies at the proceedings.
4. Provided that the court considers, after a hearing conducted in the absence of the jury, that the time, content and circumstances of the statement afford sufficient indicia of reliability.
5. "Statement" means an oral or a recorded assertion and includes conduct that could reasonably be taken to be intended as an assertion.<sup>49</sup>

The Committee considers that such a provision would strike an appropriate balance between the dictates of necessity and testimonial trustworthiness, and draws support for its conclusion from the enactment of comparable provisions in at least two American jurisdictions.<sup>50</sup>

## References

### Chapter 17: Hearsay

<sup>1</sup> Law Reform Commission of Canada, *Report on Evidence* (Ottawa: Supply and Services, 1977), s. 27(2)(a) of the proposed *Evidence Code*. This essentially is the definition of hearsay adopted in s. 2 of the proposed *Canada Evidence Act, 1982*, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.).

<sup>2</sup> In Taylor, *A Treatise on the Law of Evidence* (12th ed. London: Sweet and Maxwell, Ltd., 1931) at 363, the author outlines the reasons for the hearsay rule as follows:

The term *hearsay* is used with reference to what is done or written, as well as to what is spoken, and, in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. That this species of evidence is not given upon oath, that it cannot be tested by cross-examination, and that in many cases it supposes some better testimony, which might be adduced in the particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its extrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which may be practised with impunity under its cover, combine to support the rule that hearsay evidence is inadmissible.

<sup>3</sup> Tollefson, *Cases and Comments on the Law of Evidence* (2d ed., 1972) at 450.

<sup>4</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 175.

<sup>5</sup> This example is adapted from Lasnik, *The Sexually Abused Child Act* (unpublished paper, King County Prosecutor's Office, State of Washington, 1981) at 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> For a comprehensive review of the numerous exceptions to the hearsay rule in Canadian law, see the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4. The problem of "opinion" or "expert" evidence in child welfare controversies is discussed in Bala, Lilles, and Thompson, *Canadian Children's Law* (Toronto: Butterworths, 1982) at 190-97.

<sup>8</sup> [1970] S.C.R. 608.

<sup>9</sup> See generally Ewart, *Documentary Evidence: The Admissibility at Common Law of Records Made Pursuant to a Business Duty* (1981), 59 Can. Bar Rev. 52; and Lederman, *The Admissibility of Business Records — A Partial Metamorphosis* (1973), 11 Osgoode Hall L.J. 373.

<sup>10</sup> [1970] S.C.R. 608 at 626 *per* Hall J. (Emphasis added.).

<sup>11</sup> *Setak Computer Services Corp. v. Burroughs Business Machines Ltd.* (1977), 15 O.R. (2d) 750 (Ont. H.C.J.).

<sup>12</sup> See Ewart, *supra*, note 9 at 59 *ff.*

<sup>13</sup> *Ibid.*

<sup>14</sup> A review of the pertinent statutory provisions is given in Schiff, *Evidence in the Litigation Process* (Toronto: Carswell, 1978) at 351-52.

<sup>15</sup> *Ibid.*, at 365-67. For discussing the admissibility of medical reports in Ontario child protection proceedings, see Bala, Lilles, and Thompson, *supra*, note 7 at 184-90.

<sup>16</sup> *Re Maloney* (1971), 12 R.F.L. 167 (N.S. Co. Ct.).

<sup>17</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 189.

<sup>18</sup> *Slatterie v. Pooley* (1840), 10 L.J.Ex. 8.

- <sup>19</sup> For a discussion of the principles which are applied in determining whether the recipient of an accused's admission is a "person in authority", see the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 895-96.
- <sup>20</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 194-95.
- <sup>21</sup> [1914] A.C. 545 (H.L.).
- <sup>22</sup> See Cross, *Evidence* (5th ed. London: Butterworths, 1979) at 529-30.
- <sup>23</sup> *R. v. Christie*, [1914] A.C. 545 at 554 *per* Lord Atkinson (H.L.).
- <sup>24</sup> See, e.g., *Hubin v. The King*, [1927] S.C.R. 442; *Chapdelaine v. The King*, [1935] S.C.R. 53; and *Stein v. The King*, [1928] S.C.R. 553. But *cf.* *R. v. Harrison*, [1946] 3 D.L.R. 690, esp. at 696 (B.C.C.A.).
- <sup>25</sup> See *R. v. Horn* (1923), 40 C.C.C. 117 (Alta. C.A.); *R. v. McKevitt* (1936), 66 C.C.C. 70 (N.S.S.C.), and *R. v. Sayegh* (1982), 69 C.C.C. (2d) 84 (Ont. Prov. Ct.).
- <sup>26</sup> This case study is from the National Police Force Survey.
- <sup>27</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 201 ff. For empirical data on criminal admissions in the context of child sexual abuse in Toronto, Canada, see Lane, *The Legal Response to Sexual Abuse of Children* (October, 1982) at 52-55.
- <sup>28</sup> *Piche v. The Queen* (1970), 12 C.R.N.S. 222 (S.C.C.).
- <sup>29</sup> *Supra*, note 19.
- <sup>30</sup> [1914] A.C. 599, at 609 (P.C.).
- <sup>31</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 202.
- <sup>32</sup> [1977] 1 S.C.R. 362.
- <sup>33</sup> *Ibid.*, at 367, 369.
- <sup>34</sup> Wigmore, *Evidence* (Vol. 6, Chadborn rev. 1976) at ss. 1747-1749.
- <sup>35</sup> See generally Bulkley, "Evidentiary Theories for Admitting a Child's Out-of-Court Statement of Sexual Abuse at Trial in *Child Sexual Abuse and the Law* (3d ed. Washington, D.C.: American Bar Association, 1982) at 153; and Morgan, *A Suggested Classification of Utterances Admissible as Res Gestae* (1922), 31 Yale L.J. 229.
- <sup>36</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 236.
- <sup>37</sup> See *Ratten v. The Queen*, [1972] A.C. 378 (P.C.).
- <sup>38</sup> For Canadian cases in which an "excited utterance" was held to be admissible as an exception to the hearsay rule, see *R. v. Garlaw and Garlaw* (1976), 31 C.C.C. (2d) 163 (Ont. H.C.J.); *R. v. Mulligan* (1973), 23 C.R.N.S. 1 (Ont. S.C.), *aff'd on other grounds* (1974), 26 C.R.N.S. 179 (Ont. C.A.); *R. v. Presley*, [1976] 2 W.W.R. 258 (B.C.S.C.); *R. v. Schwartz* (1978), 40 C.C.C. (2d) 161 (N.S.C.A.); and *R. v. Belliveau* (1978), 41 C.C.C. (2d) 52 (N.S.C.A.).
- The American position regarding the admissibility of "excited utterances" of very young children appears to vary considerably from state to state: Bulkley, *supra*, note 35 at 157, and the excellent annotation in 83 A.L.R. 2d 1368, at 1368-1399 (1962). For American cases on this issue in which the child's statement was held *inadmissible*, see *Huntley v. State* (1917), 73 Fla. 800; *Ketcham v. State* (1959), 240 Ind. 107; and *State v. Rothi* (1922), 152 Minn. 73.
- <sup>39</sup> See the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 236-37.
- <sup>40</sup> *Re Harris* (1976), 28 R.F.L. 181 (Ont. Prov. Ct.).
- <sup>41</sup> *Canada Evidence Act*, 1982, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.) ss. 45-73.
- <sup>42</sup> See, e.g., *Re S.A.H.* (1982), 30 R.F.L. (2d) 23 (B.C. Co. Ct.). See also Bulkley, *supra*, note 35.
- <sup>43</sup> *Love v. State*, 64 Wis. 2d 432 (1974).
- <sup>44</sup> See Lloyd, "The Corroboration of Sexual Victimization of Children", in *Child Sexual Abuse and The Law* (3d ed. Washington, D.C.: American Bar Association, 1982) 103, esp. at 105-106.
- <sup>45</sup> A. Bernstein and P. Cowan, *Children's Concepts of How People Get Babies* (1975), 46 Child Development 77.
- <sup>46</sup> Lloyd, *supra*, note 44 at 105.



<sup>47</sup> See, e.g., *Re S.A.H.* (1982), 30 R.F.L. (2d) 23 (B.C. Co. Ct.).

<sup>48</sup> This proposal is based on s. 2 of the State of Washington's Substitute Senate Bill No. 4461, 1982.

<sup>49</sup> This is the definition of "statement" adopted in s. 2 of the *Canada Evidence Act*, 1982, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.).

<sup>50</sup> Substitute Senate Bill No. 4461, 1982, s. 2, State of Washington; Family Court Act, State of New York, s. 1046.



## Chapter 18

### Previous Sexual Conduct

That the common law tended to regard the testimony of female sexual victims as inherently untrustworthy was reviewed in Chapter 15, *Corroboration*,<sup>1</sup> and this tendency had its counterpart in the legal principles relating to the character of the complainant in sexual cases. In prosecutions for a sexual offence involving an assault, two related issues emerge which are of crucial importance to the outcome of the case:

- Has the Crown proven beyond a reasonable doubt that the complainant did not consent to the sexual activity which forms the basis of the charge?; and, more generally,
- Is the complainant perceived to be a credible witness, in the sense that the allegation against the particular accused is a *true* allegation?

The common law incorporated and fostered assumptions relating to both of these issues, namely, that a woman who was sexually experienced would be more likely to have consented to an alleged criminal sexual act than one who was “chaste,”<sup>1</sup> and that such a woman was generally more likely to be an untruthful witness.<sup>2</sup> This chapter elaborates on the common law position and on the pertinent statutory amendments introduced in 1976 and 1983, respectively.

#### The Position at Common Law<sup>3</sup>

Until 1976 in Canada, the admissibility of evidence concerning the complainant's history of sexual behaviour where the accused was charged with a sexual offence was governed by the common law. The common law rules differed depending on whether such evidence was considered relevant to a material issue (for example, whether the complainant consented to the alleged sexual act) or to a collateral issue (for example, the complainant's credibility).

In prosecutions for rape and indecent assault, the complainant's lack of consent was an element required to be proved by the Crown, and hence was a material issue before the court. At common law, the accused could cross-examine the complainant on matters considered relevant to determining whether she granted or withheld her consent to the sexual act. The common



law reflected the view that a woman who was sexually experienced tended to grant her sexual favours indiscriminately, and hence was more likely to have given her consent to the act that formed the basis of the charge against the accused. Accordingly, the complainant could be cross-examined concerning her prior sexual conduct with the accused,<sup>4</sup> her reputation as a prostitute,<sup>5</sup> and generally, her reputation for "unchastity."<sup>6</sup> The complainant was required to answer these questions and, provided they were deemed relevant to the consent issue, the trial judge had no discretion to excuse the complainant from so answering.<sup>7</sup> If the complainant denied the insinuations or refused to respond to them, the accused could contradict her answers and adduce evidence to substantiate them.<sup>8</sup>

Concerning the issue of the complainant's credibility, the common law position was only slightly less compromising for the complainant. Since it was assumed that a sexually experienced woman or girl was less likely to be truthful than one who was chaste, a complainant could be cross-examined about her sexual conduct in order to impeach her credibility. That the trial judge could intervene<sup>9</sup> and that the complainant's denials did not entitle the accused to adduce evidence contradicting them<sup>10</sup> were somewhat illusory protections; the accused's insinuations as to the complainant's moral character, founded or not, could not fail to influence the trier of fact.

These rules of evidence have justly been criticized on the basis that they shifted the focus of a sexual assault trial from the alleged actions of the accused to the sexual life-style of the complainant.<sup>11</sup> Recent legislative attempts to redress this situation are discussed below.

## Amendments Introduced in 1976

In 1976, a provision was introduced into the *Criminal Code* which was intended to afford greater protection to female complainants in sexual cases.<sup>12</sup> It provided that:

142. (1) Where an accused is charged with an offence under section 144 [rape] or 145 [attempted rape] or subsection 146(1) [sexual intercourse with a female under 14] or 149(1) [indecent assault on a female], no question shall be asked by or on behalf of the accused as to the sexual conduct of the complainant with a person other than the accused unless

- (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to ask such question together with particulars of the evidence sought to be adduced by such question and a copy of such notice has been filed with the clerk of the court; and
- (b) the judge, magistrate or justice, after holding a hearing *in camera* in the absence of the jury, if any, is satisfied that the weight of the evidence is such that to exclude it would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.

As this section of the *Criminal Code* has since been repealed,<sup>13</sup> it is unnecessary to deal with the extensive case law it generated. It is opportune, however, to note the different ways in which this provision failed to provide appropriate protection for female complainants in trials of sexual offences. This failure was precipitated largely by the section's vague wording, which did not make clear whether the common law rules, in so far as they operated to exclude evidence of the complainant's past sexual conduct, had been preserved or abrogated:

1. The section was judicially interpreted as elevating the complainant's credibility from a *collateral* issue to a *material* one, thus removing even the minimal protections afforded by the common law;<sup>14</sup>
2. The section was judicially interpreted as rendering the complainant a compellable witness for the accused at the *in camera* hearing, and hence rendering her liable to be questioned in detail concerning her past sexual conduct with persons other than the accused;<sup>15</sup> and
3. The section applied not only to offences where consent was at issue (namely, rape, attempted rape and indecent assault on a female) but also to the offence of sexual intercourse with a female under 14, for which offence the complainant's consent is *irrelevant* to the accused's culpability. With respect to this offence, the 1976 amendment sanctioned an extensive inquiry into the complainant's past sexual conduct for the purposes of impugning her credibility, an inquiry which the rules of the common law did *not* permit.<sup>16</sup>

Manifestly, the former section 142 of the *Criminal Code* failed to realize its ostensible purpose and, if anything, tended to foster the notion that the complainant in a sexual case was *herself* on trial.

## Amendments Introduced in January, 1983

The amendments to the *Criminal Code* introduced in January, 1983 substantially restrict the admission of evidence concerning the complainant's prior sexual conduct with persons other than the accused. Sections 246.6 and 246.7 of the *Criminal Code* now provide:<sup>17</sup>

246. (1) In proceedings in respect of an offence under section 246.1, 246.2 or 246.3, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless

- (a) it is evidence that rebuts evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;
- (b) it is evidence of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or
- (c) it is evidence of sexual activity that took place on the same occasion as the sexual activity that forms the subject-matter of the charge, where

that evidence relates to the consent that the accused alleges he believed was given by the complainant.

(2) No evidence is admissible under paragraph (1)(c) unless

- (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and
- (b) a copy of the notice has been filed with the clerk of the court.

(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

246.7 In proceedings in respect of an offence under section 246.1, 246.2 or 246.3, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

These provisions are noteworthy in the following respects:

- Where the accused is charged with one of the “sexual assault” offences in sections 246.1, 246.2, or 246.3, the sexual activity of the complainant with any person other than the accused may only be admitted into evidence if it meets one of the narrow conditions outlined in sections 246.6 (1)(a), 246.6 (1)(b), or 246.6 (1)(c).
- At the *in camera* hearing, both the jury and the members of the public are excluded, and the complainant is *not* a compellable witness.
- Evidence of the complainant’s sexual reputation is not admissible for the purposes of challenging or supporting the credibility of the complainant in a proceeding in respect of any of the “sexual assault” offences.

## Summary

**The Committee considers that the amendments introduced in January, 1983 provide sufficient safeguards against unjustified inquiries into the complainant’s past sexual conduct or sexual reputation, where the accused is charged with a form of “sexual assault.”** In the Committee’s view, these amendments strike an appropriate balance between protecting the complainant and preserving the accused’s fundamental right of making a full answer and defence to the sexual assault charge against him.

**In the opinion of the Committee, however, these reforms fail to provide any additional protection at all to young persons who are victims of a sexual offence other than a form of sexual assault, for example, incest, gross indecency, and sexual intercourse with a female under 14.** In trials concerning the latter offences, the common law assumption that an unchaste young person is



more likely to be untruthful will continue to operate. Consequently, insinuations concerning a young complainant's sexual history may still be admissible simply to impeach his or her credibility as a witness. In the Committee's view, this state of affairs is unacceptable.

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Sections 246.6 (1)(a) and 246.6 (1)(b), and the corollary provisions in sections 246.6 (3) through 246.6 (6), apply to *all* sexual offences.**
- 2. Section 246.7 applies to *all* sexual offences.**

These amendments would ensure that the complainant's past sexual conduct would be inadmissible merely to impeach his or her credibility as a witness, and would finally extinguish the dubious common law assumption that there is a direct correspondence between chastity and veracity.<sup>18</sup> Further, since the Committee recommends elsewhere in this Report that the concepts of "previously chaste character"<sup>19</sup> and "more to blame"<sup>20</sup> be removed from Canadian criminal law, there would be no inconsistency between the recommendations made above and the Committee's recommendations concerning amendments to the substantive criminal law of sexual offences.

## References

### Chapter 18: Previous Sexual Conduct

- <sup>1</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 83-84.
- <sup>2</sup> *Ibid.*, at 84.
- <sup>3</sup> This summary has been adapted from the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 1 at 83-85.
- <sup>4</sup> *R. v. Martin* (1834), 172 E.R. 1364, *R. v. Cockcroft* (1870), 11 Cox C.C. 410; *R. v. Holmes* (1871), L.R. 1 C.C.C.R. 334; *R. v. Riley* (1887), 16 Cox C.C. 191.
- <sup>5</sup> *R. v. Clay* (1851), 5 Cox C.C. 146; *R. v. Clarke* (1817), 171 E.R. 633; and *R. v. Tissington* (1843), 1 Cox C.C. 48.
- <sup>6</sup> *R. v. Moulton*, [1980] 1 W.W.R. 711 (Alta. C.A.); *R. v. Greatbanks*, [1959] Crim. L.R. 450; *R. v. Krausz* (1973), 57 Cr. App. R. 466 (C.C.A.).
- <sup>7</sup> *R. v. Basken and Kohl* (1974), 21 C.C.C. (2d) 321 (Sask. C.A.); *R. v. Moulton*, *ibid.*
- <sup>8</sup> *Ibid.*
- <sup>9</sup> *Ibid.* See also *Laliberté v. The Queen* (1877), 1 S.C.R. 117.
- <sup>10</sup> *Supra*, note 7.
- <sup>11</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 1 at 84.
- <sup>12</sup> S.C. 1974-75-76, c. 93, s. 8.
- <sup>13</sup> S.C. 1980-81-82-83, c. 125, s. 6.
- <sup>14</sup> *Forsythe v. The Queen*, [1980] 2 S.C.R. 268.
- <sup>15</sup> *Ibid.*
- <sup>16</sup> See *R. v. Cargill*, [1913] 2 K.B. 271 (C.C.A.), and generally Cambridge Department of Criminal Science, *Sexual Offences* (London: MacMillan and Co., 1957) at 384-86.
- <sup>17</sup> S.C. 1980-81-82-83, c. 125, s. 19.
- <sup>18</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 1 at 91-92. But see *R. v. Konkin*, (1983), 44 A.R. 10 (S.C.C.).
- <sup>19</sup> See ss. 146 (2), 151, 152, and 153 (1)(b) of the *Criminal Code* R.S.C. 1970, c. C-34.
- <sup>20</sup> See s. 146 (3) of the *Criminal Code*, *ibid.*

## Chapter 19

# Evidence of an Accused's Spouse

Where an accused is charged with a sexual offence against a young person, an important issue arises concerning the legal capacity of the accused's spouse to testify against him or her. For example, until the amendments introduced in January, 1983, the spouse of an accused charged with the offence of indecent assault on a female or indecent assault on a male was neither competent nor compellable to testify against his or her spouse, regardless of the potential cogency of that testimony. This chapter outlines the historical bases of these spousal privileges and disqualifications, and considers the current state of the law.

## Spousal Competence and Compellability

It is necessary, before delving into the historical origins of the rules concerning spousal competence and compellability, to define what is meant by the legal terms "competent" and "compellable". A witness is *competent* if he or she may lawfully be called to give evidence.<sup>1</sup> On the other hand, a witness is *compellable* if he or she may lawfully be *obliged* to give evidence, under pain of being held in contempt of court if he or she refuses to do so. The general rule is that all competent witnesses are also compellable<sup>2</sup> and, in Canada, if not in England,<sup>3</sup> where a witness is competent for a party either at common law or by statute, then such witness is also compellable by that party.<sup>4</sup>

At common law the spouse of the accused was not competent as a witness either for the defence or for the Crown, except in cases where the offence involved the transgression by one spouse of the "person, liberty, or health" of the other spouse.<sup>5</sup> The incompetence extended to spouses of either sex and to testimony relating to events that occurred both before and during the marriage.<sup>6</sup>

The historical evolution of the rules concerning marital communications between spouses and spousal incompetency belies a clear, unbroken line of development. Wigmore suggested as a possible source the testimonial rules of the old ecclesiastical law, which excluded the testimony of an alleged transgressor's family, dependants and servants.<sup>7</sup> Other considerations which gave



impetus to the rules were: the common law concept of the unity of the marriage partners (which unity inhered in the husband);<sup>8</sup> the perception that one spouse would be unduly biased in testifying regarding a matter that concerned the other spouse;<sup>9</sup> and the fact that the spouse was at one time considered an “interested party” whose testimony should accordingly be excluded from the court’s consideration.<sup>10</sup>

The most conspicuous contribution to the rules concerning spousal incompetence was, however, a pronounced judicial reluctance to disrupt “the peace of the families”<sup>11</sup> or to cause “dissensions in families between husband and wife”<sup>12</sup> by allowing one spouse (usually the wife) to be a witness for or against the other spouse (usually the husband). As Wigmore stated, “possibly the true explanation is, after all, the simplest one, namely, that a natural and strong repugnance was felt . . . to condemning a man by admitting to the witness stand against him those who lived under his roof, shared the secrets of his domestic life, depended on him for sustenance and were almost numbered among his chattels.”<sup>13</sup> Although many inroads to the common law rules have been made by legislative enactments over the years, the residue of these rules reflects the law’s traditional reluctance to oblige one spouse to testify against the other in a criminal proceeding.

Before considering the current state of Canadian law in this regard, it should be noted that the special rules concerning spousal competence and compellability discussed below apply only where the persons concerned are legally married.<sup>14</sup> Persons who are not legally married, even though they may have lived together for several years, enjoy no special privilege in this regard.

## Evidence of an Offender’s Spouse in Criminal Proceedings

In criminal proceedings, the statutory provision bearing on the issues of spousal competence and compellability and of interspousal communications during marriage is section 4 of the *Canada Evidence Act*,<sup>15</sup> which provides:<sup>16</sup>

4.(1) Every person charged with an offence, and, except as otherwise provided in this section, the wife or husband, as the case may be, of the person so charged, is a competent witness for the defence, whether the person so charged is charged solely or jointly with any other person.

(2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 146, 148, 150 to 155, 157, 166 to 169, 175, 195, 197, 200, 246.1, 246.2, 246.3, 249 to 250.2, 255 to 258 or 289 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged.

(3) No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.

(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223, 245, 245.1, 245.2 or 245.3 of the *Criminal Code* where the complainant or victim is under the age of fourteen years is a competent and compellable witness for the prosecution without the consent of the person charged.

(4) Nothing in this section affects a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

(5) The failure of the person charged, or of the wife or husband of such person, to testify, shall not be made the subject of comment by the judge, or by counsel for the prosecution.

From the Committee's perspective, the most important of these provisions are sections 4(2) and 4(3.1), which set out those criminal offences on prosecutions for which the accused's spouse is both competent and compellable for the Crown without the consent of the accused. These sections, however, must be understood in light of the other provisions of section 4 discussed below.

Section 4(1) of the *Canada Evidence Act* is a statutory departure from the common law rule that a spouse was not competent either for the defence or for the Crown, except where the offence involved a transgression by the accused of the "person, liberty, or health" of the victim spouse. It provides that, subject to the other provisions in section 4, the spouse of an accused person is a competent witness for the defence. Further, the predominant judicial view in Canada is that, where a witness is competent for a party either at common law or by statute, then such witness is also compellable to testify at the instance of that party.<sup>17</sup>

Section 4(3) codifies the common law privilege of nondisclosure concerning communications by one spouse to another during their marriage and provides:

No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.

This privilege of non-disclosure can be claimed only by the spouse who received the communication sought to be introduced in evidence, not by the spouse who made the communication. Further, once the marriage has been dissolved by divorce, the marital privilege concerning communications between spouses may not be claimed.<sup>18</sup>

An important legal issue is whether the privilege conferred by section 4(3) can be claimed where the spouse claiming it is a competent and compellable witness for the Crown pursuant to section 4(2). Canadian courts have differed on this question. The Quebec Court of Appeal has held that the privilege conferred by section 4(3) does not apply to a spouse who is otherwise competent and compellable for the Crown pursuant to section 4(2);<sup>19</sup> the Alberta Court of Appeal has reached the opposite conclusion,<sup>20</sup> and the Court of Appeal for Ontario declined to determine this issue when an opportunity presented itself.<sup>21</sup>

Obviously, the provisions of section 4(2) lose much of their force, particularly in the context of intra-familial child sexual abuse, where an otherwise competent and compellable spouse who has pertinent testimony can nonetheless claim the privilege of non-disclosure concerning, for example, her husband's inculpatory statements to her.

It has been held both in Canada<sup>22</sup> and in England<sup>23</sup> that an inculpatory letter written by one spouse to another will be admissible in evidence if a third party is made aware of the letter's contents, as will evidence of a third party who overhears an interspousal communication.<sup>24</sup> On the other hand, where an interspousal "private communication" is electronically intercepted by the police pursuant to Part IV.1 of the *Criminal Code*,<sup>25</sup> the intercepted communication will be inadmissible where the non-accused spouse does not waive the privilege conferred by section 4(3), and where the offence is not one for which the non-accused spouse is a competent or compellable witness at the instance of the Crown.<sup>26</sup>

Section 4(4) of the *Canada Evidence Act* provides:

Nothing in this section affects a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

As noted above, the common law exception to the general rule of spousal incompetence pertained to offences in which one spouse transgressed the "person, liberty, or health" of the other spouse. This exception was established in the early seventeenth century in *Lord Audley's Case*,<sup>27</sup> where a wife was held to be competent to testify against her husband, who was charged as an accessory to her rape. Cross argues that "the decision was based on necessity. Were the law otherwise the injured spouse would frequently have no remedy."<sup>28</sup>

Recent years have witnessed an expansion of the kinds of offences for which the victim spouse will be considered competent to testify against the offending spouse pursuant to section 4(4).<sup>29</sup> This development has broadened to include offences directed, not only against the spouse of the offender, but also against a child of the family. For example, in *R. v. MacPherson*,<sup>30</sup> the accused was charged with assaulting his infant son, and an issue arose concerning the wife's competence to testify against him. The Alberta Court of Appeal held that section 4(4) should be considered to include such a situation, and approved the Ontario County Court decision in *R. v. McNamara*,<sup>31</sup> which adopted a similar conclusion. In *R. v. Fellichle*,<sup>32</sup> a mother was charged with the attempted murder of her infant son; the British Columbia Supreme Court held that the mother's husband was competent to testify against her. From these decisions, it is apparent that Canadian courts are taking a liberal, and altogether justifiable, view concerning the kinds of behaviours by one spouse which should be considered injurious to the "person, liberty, or health" of the other spouse.



# Amendments to the Canada Evidence Act Introduced in January, 1983

Sections 4(2) and 4(3.1) of the *Canada Evidence Act* provide:

4. (2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 146, 148, 150 to 155, 157, 166 to 169, 175, 195, 197, 200, 246.1, 246.2, 246.3, 249 to 250.2, 255 to 258 or 289 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged.

4.(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223, 245, 245.1, 245.2 or 245.3 of the *Criminal Code* where the complainant or victim is under the age of fourteen years is a competent and compellable witness for the prosecution without the consent of the person charged.

As a consequence of these amendments, the wife or husband of a person charged with virtually any sexual offence against a young person is a competent and compellable witness for the Crown, and this applies also to other assaultive offences where the offending spouse's victim is under the age of 14. The amendments to section 4 of the *Canada Evidence Act* introduced in January, 1983 are illustrative of the gradual erosion in Canadian law of the special testimonial privileges and disqualifications conferred by the common law on husbands and wives.

## Evidence of Spouses in Child Welfare Proceedings

The rules of evidence relating to spouses in child welfare proceedings are governed by provisions of the various provincial "child welfare" laws, or by provincial evidence acts, or by both. The applicable law in each province and territory is canvassed below.

### *Newfoundland*

In Newfoundland, section 12(3) of *The Child Welfare Act*, 1972, S. Nfld. 1972, No. 37, enables a judge to "compel the attendance of witnesses". Section 2 of *The Evidence Act*, R.S. Nfld. 1970, c. 115 makes spouses "competent and compellable" on the trial of any issue joined, or any matter or question, or on any enquiry arising in any suit action or other proceeding, in any court of justice. Section 4 of that Act retains the interspousal communication privilege of non-disclosure.

### *Prince Edward Island*

The Prince Edward Island *Family and Child Services Act*, S.P.E.I. 1981, c. 12, is silent as to witnesses' competence and compellability. However, section 4 of the *Evidence Act*, R.S.P.E.I. 1974, c. E-10, mandates spousal competence and compellability. Section 9 provides that a spouse receiving an interspousal communication is not compellable to disclose such communication.

### *Nova Scotia*

In Nova Scotia, the *Children's Services Act*, S.N.S. 1976, c. 8, makes no express provision for the competence and compellability of witnesses. Section 42 of the Nova Scotia *Evidence Act*, R.S.N.S. 1967, c. 94, however, provides that spouses are competent and compellable and section 46 retains the interspousal communications privilege.

### *New Brunswick*

The New Brunswick *Child and Family Services and Family Relations Act*, S.N.B. 1980, c. C-2.1, section 30(9), provides:

"Notwithstanding the *Evidence Act*, a spouse may be compelled to testify as a witness in the course of judicial proceedings brought against his spouse under this Act with respect to abuse or neglect of a child or an adult."

This provision seems to give paramountcy to this act over section 10 of the New Brunswick *Evidence Act*, R.S.N.B. 1973, c. E-11, which preserves spousal non-compellability with respect to the marital communications of the spouses. Section 3 of the *Evidence Act* provides generally for spousal competence and compellability.

### *Quebec*

In Quebec, section 85 of the *Youth Protection Act*, S.Q. 1977, c. 20 incorporates by reference article 295 of the *Code of Civil Procedure* R.S.Q. 1980, c. C-25 (among others), which provides that "all persons are competent to testify . . . , and any person competent to testify may be compelled to do so. Relationship, connection by marriage and interest are objections only to the credibility of a witness".

### *Ontario*

In Ontario, s. 8 of the *Evidence Act*, R.S.O. 1980, c. 145 makes parties to an "action" and their spouses "competent and compellable to give evidence on behalf of themselves or of any of the parties."

Section 1 of that Act defines "action" to include "an issue, matter, arbitration, reference, investigation, inquiry . . . and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Ontario." In addition, s. 28(2) of the *Child Welfare Act*, R.S.O. 1980, c. 66, provides that the family court has "the same power to enforce the attendance of witnesses and to compel them to give evidence . . . as is vested in any court in civil cases." The exception is interspousal communications, for which the recipient spouse is not compellable by section 11 of the *Evidence Act*.

### *Manitoba*

In Manitoba, *The Child Welfare Act*, S.M. 1974, c. 30, section 25(8), empowers a judge to "compel the attendance of any person and require him to give evidence under oath". *The Manitoba Evidence Act*, R.S.M. 1970, c. E-150, of that province provides for the competence and compellability of spouses (section 5) and also retains the limit on compellability of a recipient spouse regarding interspousal communications (section 10).

### *Saskatchewan*

*The Saskatchewan Evidence Act*, R.S.S. 1978, c. S-16, provides for spousal competence and compellability (section 35(1)) and retains the interspousal

communication privilege (section 36). *The Family Services Act*, R.S.S. 1978, c. F-7, of that province empowers a judge to "compel the attendance of witnesses in the same manner as a judge may compel the attendance of witnesses in summary conviction proceedings." (Section 25).

### *Alberta*

The *Alberta Evidence Act*, R.S.A. 1980, c. A-21, is similar to that of Ontario in this regard. Section 4(2) of that Act sets out the general rule that spouses are "competent and compellable" and section 8 provides an exception for interspousal communications, for which the spouse receiving the communication is not compellable. The *Alberta Child Welfare Act*, R.S.A. 1980, c. C-8, section 13(1)(a), empowers a judge to "compel the attendance of any person and require him to give evidence on oath . . .". Similarly, section 12(1) of that Act provides that proceedings "may be as informal as the circumstances will permit". The combined effect of these provisions seems to confer "competence and compellability" on spouses. However, some uncertainty exists whether interspousal communications remain privileged at child welfare proceedings.

### *British Columbia*

In British Columbia, the *Family and Child Service Act*, S.B.C. 1980, c. 11, provides in section 19(1) that a court may "compel the attendance of witnesses and administer oaths" in proceedings under the Act. Section 7 of the *Evidence Act*, R.S.B.C. 1979, c. 116, makes spouses of parties "competent and compellable" and section 8 retains the interspousal communication privilege by providing that the recipient spouse is not compellable to disclose marital communications.

### *Yukon Territory*

The Yukon Territory's *Child Welfare Ordinance* R.O.Y.T. 1971, c. C-4 makes no express provision for the powers of a judge to compel witnesses at child protection hearings. However, section 4(1) of the *Evidence Ordinance*, R.O.Y.T. 1971, c. E-6, confers competence and compellability on spouses in an "action", which includes "any civil proceedings, inquiry, arbitration and . . . any other prosecution or proceeding authorized or permitted to be tried, heard, had or taken . . . under the law of the Territory" [section 2(1)]. Section 7(1) of the *Evidence Ordinance* provides that the recipient spouse is not compellable to disclose interspousal communications.

### *Northwest Territories*

In the Northwest Territories, section 101 of the *Child Welfare Ordinance*, R.O.N.W.T. 1974, c. C-3, confers upon a judge the "same power . . . to enforce the attendance of witnesses and to compel them to give evidence . . . as is vested in the Court in civil cases." Section 4 of the *Evidence Ordinance* R.O.N.W.T. 1974, c. E-4, like its provincial counterparts, makes spouses competent and compellable. Similarly, section 7 of the *Evidence Ordinance* retains the interspousal communication privilege of non-disclosure.

As is apparent from the foregoing summary, there is uncertainty in a number of jurisdictions about whether a spouse who is compellable at a child welfare proceeding may also be compelled to disclose relevant communications made to him or her by the other spouse during their marriage.



## Summary

The Committee considers that, in cases of alleged sexual or physical abuse of a young person, the social importance of making available to the court all probative evidence far exceeds that of ostensibly protecting a marital relationship. That the sexual abuse of young persons, by its very nature, is difficult to prove makes it even more crucial that all potentially relevant testimony, whether elicited from the offender's spouse or from an other party, should be accessible to the judicial process. Public policy and children's safety alike require that probative evidence should not be withheld. In the words of a British jurist:<sup>33</sup>

Respect is due to the confidences of married life: but so is respect due to the ascertainment of the truth. Marital accord is to be preserved: but so is public security.

Accordingly, the Committee recommends that:

1. The *Canada Evidence Act* be amended to provide explicitly that, where a spouse is competent and compellable pursuant either to section 4(2) or 4(3.1) of that Act, the privilege of non-disclosure contained in section 4(3) may *not* be claimed by that spouse.
2. Each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure*, be amended to provide explicitly that, where a spouse is otherwise competent and compellable at a child welfare proceeding, such spouse may *not* claim any privilege of non-disclosure relating to inter-spousal communications.

## References

### Chapter 19: Evidence of an Accused's Spouse

<sup>1</sup> Cross, *Evidence* (5th ed. London: Butterworths, 1979) at 163.

<sup>2</sup> *Ibid.*

<sup>3</sup> See *Hoskyn v. Metropolitan Police Commissioner*, [1978] 2 All E.R. 136, 67 Cr. App. Rep. 88 (H.L.).

<sup>4</sup> *R. v. Czipps* (1979), 101 D.L.R. (3d) 323, 48 C.C.C. (2d) 166 (Ont. C.A.); *R. v. Sillars* (1978), 45 C.C.C. (2d) 283, [1979] 1 W.W.R. 743 (B.C.C.A.); *R. v. Lonsdale* (1973), 15 C.C.C. (2d) 201, [1974] 2 W.W.R. 157 (Alta. C.A.). See also *Gosselin v. The King* (1903), 33 S.C.R. 255, 7 C.C.C. 139.

<sup>5</sup> Uniform Law Conference of Canada, *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, (Ottawa: Department of Justice, 1981) at 297.

<sup>6</sup> Cross, *supra*, note 1, at 166.

<sup>7</sup> Wigmore, 8 *Evidence in Trials at Common Law*, rev. McNaughton (Boston: Little, Brown & Co., 1961), s. 2227.

<sup>8</sup> *R. v. Neal* (1835), 7 Car. & P. 168, 173 E.R. 74.

<sup>9</sup> *Davis v. Dinwoody* (1792), 4 T.R. 678, 100 E.R. 1241.

<sup>10</sup> Cross, *supra*, note 1, at 165.

<sup>11</sup> *Barker v. Dixie* (1736), Cas. T. Hard. 264 at 264, 95 E.R. 171 at 171 *per* Lord Hardwicke.

<sup>12</sup> *R. v. Cliviger* (1788), 2 T.R. 263 at 269, 100 E.R. 143 at 146 *per* Grose J.

<sup>13</sup> Wigmore, *supra*, note 7, s. 2227.

<sup>14</sup> *Ex parte Coté* (1971), 5 C.C.C. (2d) 49 (Sask. C.A.). See also *R. v. Lonsdale* (1973), 15 C.C.C. (2d) 201 (Alta. C.A.), and *R. v. Mann*, [1971] 5 W.W.R. 84 (B.C.S.C.).

<sup>15</sup> *Canada Evidence Act*, R.S.C. 1970, c. E-10.

<sup>16</sup> This section was amended by S.C. 1980-81-82-83, c. 125, s. 29.

<sup>17</sup> See cases cited *supra*, note 4.

<sup>18</sup> *R. v. Marchand* (1980), 55 C.C.C. (2d) 77 (N.S.C.A.).

<sup>19</sup> *R. v. St.-Jean* (1976), 34 C.R.N.S. 378 (Que. C.A.).

<sup>20</sup> *R. v. Jean and Piesinger* (1979), 46 C.C.C. (2d) 176 (Alta. C.A.), *aff'd* 51 C.C.C. (2d) 192n (S.C.C.).

<sup>21</sup> *Re Mailloux and The Queen* (1980), 55 C.C.C. (2d) 193 (Ont. C.A.).

<sup>22</sup> *R. v. Armstrong* (1970), 1 C.C.C. (2d) 106 (N.S.C.A.).

<sup>23</sup> *Rumping v. D.P.P.*, [1962] 3 All E.R. 256 (H.L.).

<sup>24</sup> See *R. v. Bartlett* (1837), 173 E.R. 362; *R. v. Smithies* (1832), 172 E.R. 999; *R. v. Simons* (1834), 172 E.R. 1355; *R. v. Jean and Piesinger*, *supra*, note 20; and *Rumping v. D.P.P.*, *supra*, note 23. But see *R. v. Dreher* (1952), 103 C.C.C. 321 (Alta. C.A.).

<sup>25</sup> *Cr. Code*, ss. 178.1 — 178.23.

<sup>26</sup> *R. v. Jean and Piesinger*, *supra* note 20.

<sup>27</sup> (1631), 3 State Tr. 401, followed in *R. v. Azire* (1725), 1 Stra. 633.

<sup>28</sup> *Supra*, note 1, at 167.

<sup>29</sup> See, e.g., *R. v. Sillars*, [1979] 1 W.W.R. 743, 45 C.C.C. (2d) 283 (B.C.C.A.) (charge of arson); *R. v. Bowles*, [1967] 3 C.C.C. 60, 50 C.R. 353 (Alta. Prov. Ct.) (charge of forcible entry into a

dwelling-house); *R. v. Beam* (1974), 19 C.C.C. (2d) 41 (Ont. Prov. Ct.) (charge of assault causing bodily harm); *Maida v. The Queen* (1979), 12 C.R. (3d) 227 (Ont. Co. Ct.) (charge of dangerous driving); *R. v. Czipps* (1979), 101 D.L.R. (3d) 323, 48 C.C.C. (2d) 166 (Ont. C.A.) (charge of possession of a weapon for a purpose dangerous to the public peace).

<sup>30</sup> (1980), 36 N.S.R. (2d) 674 (C.A.).

<sup>31</sup> (1979), 48 C.C.C. (2d) 201 (Ont. Co. Ct.).

<sup>32</sup> (1979), 12 C.R. (3d) 207 (B.C.S.C.).

<sup>33</sup> *Rumping v. D.P.P.*, *supra*, note 23 at 276 *per* Lord Morris of Borth-Y-Gest.



## Chapter 20

### Similar Acts

The doctrine of similar fact evidence is an exception to the general rule that the Crown may not lead evidence of the accused's criminal disposition<sup>1</sup> unless the accused has in some way put his or her character in issue. Where, for example, the accused is charged with sexual assault on a pre-pubescent girl, the Crown may lead evidence of prior sexual assaults by the accused on other young girls, even though the prior incidents were not the subject of criminal charges against the accused and the accused has not previously put his character in issue, provided that the so-called "similar fact evidence" is considered by the trial judge to be highly probative on an issue before the court. Many of the leading Canadian and English legal decisions on similar fact evidence have involved the sexual molestation either of one child or of a number of children in a roughly similar fashion over a period of time.

As exemplified in the following case study from the National Police Force Survey, this behavioural tendency of some sexual offenders against children was documented in the research findings of the Committee.

The adult male accused was charged with a total of 10 counts, for offences including buggery, indecent assault on a male and assault with intent to commit buggery. He committed the acts for which he was charged on five separate occasions with five boys aged 13 and 14 years. The male victims were runaways, and the accused's consistent "recruitment" pattern was to befriend the runaway, invite him to the accused's apartment to spend the night, and thereupon commit the assault. He apparently chose runaways as his victims because they were unlikely to make complaints, for fear of involving the police and being sent home or to a child welfare agency. The accused's activities came to light when two of his victims spoke to a social worker, which subsequently prompted a police investigation.

The common denominator in cases where similar fact evidence is sought to be introduced by the Crown is that such evidence will, if admitted, invariably taint the accused with an odour born of activities other than the one for which he or she stands trial. Canadian courts have, accordingly, professed to admit such evidence only where its relevance to an issue before the court materially outweighs its prejudicial nature, and where there is a demonstrated link between the allegedly similar facts and the accused.<sup>2</sup>

Whether similar fact evidence can afford corroboration is an important issue in the context of sexual offences against young persons, in spite of the repeal effected in January, 1983 of the statutory corroboration requirement for assaultive sexual offences. In all sexual offences, where the Crown adduces the evidence of a child who is unsworn, no conviction may be registered against the accused unless such evidence "is corroborated in a material particular by evidence that implicates the accused".<sup>3</sup> Accordingly, whether a particular form of evidence is capable of corroborating a child's unsworn testimony will continue to be crucial in cases of child sexual abuse, in the absence of wholesale changes to the evidentiary rules concerning children's testimony.

The doctrine of similar fact evidence tends to afford protection for sexually abused young persons. It allows the previous sexual behaviour of the accused with the same child or with others to be used to show that the accused may be guilty of the sexual offence charged, while safeguarding the accused against far-fetched inculpatory inferences based on his or her prior behaviour.

**The Committee therefore recommends that this evidentiary doctrine be retained. Further, the Committee considers that the "similar acts" exception to the character evidence rule should not be codified, and in this respect, agrees with the Federal/Provincial Task Force on Uniform Rules of Evidence<sup>4</sup> and with the legislative proposals of Bill S-33.<sup>5</sup>**

The Committee also makes the following observations concerning this form of evidence:

1. The potential probative value of similar fact evidence reinforces the necessity of allowing children of younger ages to testify in court. The admissibility of similar fact evidence depends, where the similar facts are proffered by young children, largely on whether those children are deemed legally competent to testify to those facts at trial.
2. Evidence of past incidents of child abuse by parents (evidence of "past parenting"<sup>6</sup>) has an important role to play in child welfare proceedings, in determining whether a child is in need of protection from a particular person or persons and, if so, the most appropriate legal disposition vis-a-vis the child. The Committee considers that the court should have before it all relevant evidence in making these determinations.

**With respect to provincial child welfare legislation, the Committee recommends that a provision similar to section 28(4) of the Ontario *Child Welfare Act*<sup>7</sup> be enacted in each province and territory. Section 28(4) of that Act provides:**

Notwithstanding any privilege or protection afforded under the *Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report whether oral or written, including any transcript, exhibit or finding in a prior proceeding whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.<sup>8</sup>

## References

### Chapter 20: Similar Acts

- <sup>1</sup> Cross, *Evidence* (5th ed. London: Butterworths, 1979) at 354.
- <sup>2</sup> *Sweitzer v. The Queen* (1982), 68 C.C.C. (2d) 193 (S.C.C.); *Guay v. The Queen* (1979), 42 C.C.C. (2d) 536 (S.C.C.).
- <sup>3</sup> *Criminal Code*, R.S.C. 1970, c. C-34, as am., s. 586. See also *Canada Evidence Act*, R.S.C. 1970, c. E-10, as am., s. 16(2); and *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, as am., s. 19(2).
- <sup>4</sup> *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, (Ottawa: Department of Justice, 1981) at 100.
- <sup>5</sup> *Canada Evidence Act*, Bill S-33, 1982 (32nd Parl. 1st Sess.), 26(b). See generally ss. 23-31 of the proposed Bill.
- <sup>6</sup> See generally Bala, Lilles, and Thompson, *Canadian Children's Law* (Toronto: Butterworths, 1982) at 181-84.
- <sup>7</sup> *Child Welfare Act*, R.S.O. 1980, c. 66.
- <sup>8</sup> Judicial experience with this provision in Ontario indicates that family court judges are mindful of the prudential limits of this form of evidence: see *C.A.S. of Metro Toronto v. N.H.B.*, (unreported) May 8, 1980, (Ont. Prov. Ct.); *Kawartha Haliburton C.A.S. and Haylock* (1980), 3 F.L.R.R. 27 (Ont. Prov. Ct.); *C.A.S. of Metro Toronto v. C. and C.* (1981), 21 R.F.L. (2d) 426 (Ont. Prov. Ct.); and *Elizabeth and James C. v. Catholic Children's Aid Society of Metropolitan Toronto* (1982), 37 O.R. (2d) 82 (Ont. Co. Ct.). For an example of the application of similar fact evidence in the context of the manslaughter of a child by a parent, see *R. v. Schell and Pacquette* (1977), 33 C.C.C. (2d) 422 (Ont. C.A.).





## Chapter 21

# Public Access to Hearings

This chapter reviews federal and provincial provisions concerning who may attend a legal proceeding in which a sexual assault on a young person is alleged and what effects these provisions may have in relation to obtaining a full and candid presentation of the child's or youth's testimony. The issue of protecting the privacy of young victims of sexual offences is considered separately in Chapter 22, *Publication of Victims' Names*.

## Provincial and Territorial Child Welfare Legislation

Canadian child welfare legislation reflects the four major options which may be followed in relation to the closed or open nature of child welfare/child protection proceedings: closed (or *in camera*); open to any member of the public; open to some members of the public but not to others; or left to the discretion of the presiding judge, on a case-by-case basis. The following is a summary of how each province and territory deals with this issue.

### *Newfoundland*

The judge must investigate the case of every child and dispose thereof in premises other than an open courtroom. In the case of a person charged with an offence against the child, the judge may in his or her discretion proceed *in camera*.<sup>1</sup>

### *Prince Edward Island*

The judge has discretion to allow persons other than the immediate parties to the proceeding to attend, and he or she may exclude the child from any part of the hearing.<sup>2</sup>

### *Nova Scotia*

The judge has discretion to permit attendance at the hearing of persons other than the immediate parties to the proceeding.<sup>3</sup>

### *New Brunswick*

The judge has discretion to hold proceedings either in open court or *in camera*, and this discretion should be exercised in light of:

- the public interest in hearing the proceedings in open court;

- any potential harm or embarrassment that may be caused to any person if matters of a private nature are disclosed in open court; and
- any representations made by the parties.<sup>4</sup>

### *Quebec*

It is provided that Youth Court hearings should be held *in camera*, subject to the presence of a member or authorized agent of the Committee for the Protection of Youth. It is also provided, however, that any journalist must be admitted unless the Court considers that his or her presence would cause prejudice to the child.<sup>5</sup>

### *Ontario*

There is a presumption that hearings shall be closed, subject to the judge's discretion to hold otherwise having regard to the wishes of and interests of the parties and to whether the emotional health of any child who is present at the hearing would be injured by the presence of others at the hearing. Two media representatives may be present, subject to their being excluded if the judge determines that their presence would be injurious to the emotional health of any child before the court.<sup>6</sup>

### *Manitoba*

The public is excluded from child protection hearings, and the presence of the child at such hearing is not required unless the judge so orders.<sup>7</sup>

### *Saskatchewan*

The judge has a discretion to admit persons other than the immediate parties to the proceeding.<sup>8</sup>

### *Alberta*

It is provided that the judge shall exclude from the room where the hearing is held all persons other than counsel, any law officer, any child welfare worker involved in the matter, the Director or his representative and the parent or guardian of the child or the immediate relatives of the child concerning whom the hearing is being held, and such other persons as the judge in his or her discretion permits. Further, if the judge considers it desirable, he or she may exclude from the room where a hearing is being held the child concerned, the parent or guardian, and the immediate relatives of the child.<sup>9</sup>

### *British Columbia*

It is provided that proceedings before a court that deals with family or children's matters shall be open to the public, subject to the judge's discretion to exclude any person from the courtroom, *other than* a child before the court, a party to the proceedings or their counsel, where he or she is satisfied that the person's presence:

- may materially prejudice the best interests of a child;
- will substantially prejudice the interests of any adult party to the proceedings; or
- will interfere with the administration of justice.<sup>10</sup>

### *Yukon Territory*

The judge has discretion to permit attendance of persons other than immediate parties to the proceeding, and he or she may exclude the child in



respect of whom a hearing is being held, except where the child's presence is necessary.<sup>11</sup>

### *Northwest Territories*

The judge has discretion to permit attendance of persons other than immediate parties to the proceeding, and he or she *shall* exclude the child in respect of whom a hearing is being held, except where the child's presence is necessary.<sup>12</sup>

## Juvenile Delinquents Act and Young Offenders Act

The question of public access to hearings pursuant to the *Juvenile Delinquents Act*<sup>13</sup> was in a somewhat unsettled state in light of recent judicial and constitutional developments. Sections 12(1) and 12(2) of the *Juvenile Delinquents Act* specified that the trials of children shall take place without publicity and separately and apart from the trials of other accused persons, and preferably in a private office or room. In *C.B. and The Queen*,<sup>14</sup> the Supreme Court of Canada held that the phrase "without publicity" in section 12(1) should be taken to mean *in camera* and that, apart from the exceptions listed in sections 10(1), 28(2), and 31(b) of that Act, the trial judge had no discretion to admit members of the public to the trial of a juvenile. This decision was rendered, however, before the coming into force of the *Constitution Act 1982* and the attendant *Charter of Rights and Freedoms*. The *Charter* guarantees, among other provisions, the following fundamental freedoms: freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication.<sup>15</sup> In the case of *Re Southam Inc. and The Queen (No. 1)*,<sup>16</sup> the Ontario Court of Appeal held (for reasons considered later) that:

1. Although "free access to the courts" is not specifically enumerated under the heading of "fundamental freedoms" in the *Charter*, such access is an integral and implicit part of the guarantee given to everyone of freedom of opinion and expression, which includes freedom of the press.
2. The respondent's right to attend the juvenile hearing had accordingly been infringed.
3. The virtual blanket exclusion of the public under section 12(1) was not a reasonable limit which could be demonstrably justified in a free and democratic society.
4. Section 12(1) of the *Juvenile Delinquents Act*, being inconsistent with the provisions of the Constitution, was of no force or effect.

Accordingly, proceedings under the *Juvenile Delinquents Act* remained open to the public.

The *Juvenile Delinquents Act* was replaced effective April, 1984 by the *Young Offenders Act*,<sup>17</sup> which takes a much different approach to this issue. Under the *Young Offenders Act*, hearings are open to the public, with the court retaining the power under certain circumstances to exclude any or all members

of the public from the proceedings, with specified exceptions.<sup>18</sup> It is much more likely that these provisions will withstand constitutional challenge, since they appear to strike a more appropriate balance between the right of access by the public to the work of the courts and society's interest in the protection and reformation of young offenders.

## Proceedings under the Criminal Code

A number of provisions in the *Criminal Code* are relevant to the issue of public access to criminal proceedings. Section 465 (1)(j) provides that, on a preliminary inquiry, a justice may "order that no person other than the prosecutor, the accused and their counsel shall have access to or remain in the room in which the inquiry is held, where it appears to him that the ends of justice will be best served by so doing."<sup>19</sup> Further, in preliminary hearings or trials in respect of a "sexual assault" offence under section 246.1, section 246.2 or section 246.3, no evidence is admissible concerning the sexual activity of the complainant with any person other than the accused unless the presiding judicial officer, after holding a hearing *in which the jury and the public are excluded*, is satisfied that the conditions set out in section 246.6 are met.<sup>20</sup>

Section 441 of the *Criminal Code* pertains to trials of young persons under the age of 16 who have been transferred to adult criminal court pursuant to section 9 of the *Juvenile Delinquents Act*. It provides that trials of such young persons shall take place "without publicity" (namely, *in camera*), regardless of whether the young person is charged alone or jointly with another person. In light of the decision of the Ontario Court of Appeal in *Re Southam Inc. and The Queen (No. 1)*,<sup>21</sup> however, section 441 of the *Criminal Code* would seem to be of doubtful constitutional validity. In any event, section 441 of the *Criminal Code* was repealed by the *Young Offenders Act*.

The most important provisions governing the question of openness of criminal trials are found in sections 442(1) and 442(2) of the *Criminal Code*, which provide:

442.(1) Any proceedings against an accused that is a corporation or who is or appears to be sixteen years of age or more shall be held in open court, but where the presiding judge, magistrate or justice, as the case may be, is of the opinion that it is in the interest of public morals, the maintenance of order or the proper administration of justice to exclude all or any members of the public from the court room for all or part of the proceedings, he may so order.

(2) Where an accused is charged with an offence mentioned in section 246.4 and the prosecutor or the accused makes an application for an order under subsection (1), the presiding judge, magistrate or justice, as the case may be, shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

In reference to section 442(2), the offences mentioned in section 246.4 of the *Criminal Code* are: incest (section 150); gross indecency (section 157); sexual assault (section 246.1); sexual assault with a weapon, threats to a third

party, or causing bodily harm (section 246.2); and aggravated sexual assault (section 246.3).

The opening clause of section 442(1) reflects the general principle at common law that judicial proceedings shall be held in open court. As was stated by Mr. Justice Clement in *R. v. Warawuk*<sup>22</sup>:

A principle of administration of justice that is fundamental to common law Courts and has been so over the centuries [is] that trials, whether civil or criminal in their purpose, shall be held in open court.

Apart from the exceptional circumstances governed by section 246.6 and discussed above, members of the public cannot be banned from a criminal trial unless the presiding judge determines that the nature of the charge or of the evidence likely to be presented is such as to warrant excluding the public under one of the three headings set out in section 442(1), namely, the interest of public morals, the maintenance of order or the proper administration of justice. If a criminal trial has been improperly held *in camera*, the judgment may be set aside and a new trial ordered.<sup>23</sup>

The strength of the presumption in favour of open courts in criminal proceedings, which has now been given constitutional force in the *Charter of Rights and Freedoms*,<sup>24</sup> is apparent from the legal decisions that have interpreted the scope of the exceptions relating to “the interest of public morals” and “the proper administration of justice.”

The reluctance of Crown witnesses to testify due to embarrassment over having to appear in open court and testify on a charge of keeping a common bawdy-house is not a sufficient reason to conduct a trial, or any part thereof, *in camera*.<sup>25</sup>

On charges of unlawful sexual intercourse, indecent assault and gross indecency where the complainants were four teenage girls, the Ontario Court of Appeal held that the embarrassment which would thereby be occasioned to the teenage complainants is not a sufficient ground to hold the trial *in camera*.<sup>26</sup>

In *R. v. Warawuk*,<sup>27</sup> the accused was charged with two counts of unlawful sexual intercourse with teenage girls. Because he was related by blood to the victims (his cousins), and because it was likely that school children would attend the proceedings, the Crown applied to have the trial conducted *in camera*. The court granted the application, and the accused was convicted. On appeal, it was held that the trial judge did not have sufficient grounds to hold the entire trial *in camera*. A new trial was ordered on the ground that a trial held in contravention of the law cannot sustain the adjudication of the issue. The Alberta Court of Appeal held that a genetic relationship between the parties is not in itself a sufficient ground for holding the trial *in camera*, nor is the fact that the charges are for sexual offences. Although the presence of children at such a trial might well justify an order excluding such children from the courtroom, it would not warrant the exclusion of the public generally. On general principles, exclusion of the public in the interest of public morals relates not to the type of offence charged but to the evidence proposed to be tendered, namely, evidence of acts or circumstances which might reasonably be expected to offend, or to have an adverse or corrupting effect on,



public morals by the publicity of obscenities, perversions, or the like. Alternatively, a witness might need the reassurance of exclusion of the public in testifying to certain matters, which would justify the order of exclusion on the grounds of the proper administration of justice. The discretion to exclude the public must be exercised cautiously and only as circumstances demand.

In *R. v. Brint*,<sup>28</sup> the accused was tried on a charge of indecent assault on a female. Notice had been served under the former section 142(1) of the *Criminal Code* that the complainant would be asked questions concerning her prior sexual conduct with persons other than the accused. The proceedings were held *in camera* while the complainant was testifying, but the trial judge also allowed the court to remain closed for the balance of the trial. Because the complainant was 15 years-old, the Alberta Court of Appeal held that her evidence was properly given *in camera*; it also held, however, that there had been insufficient grounds to justify excluding the public for the remainder of the trial in the interest of public morality. The accused's conviction was quashed and a new trial ordered.

In *Re Cullen and The Queen*,<sup>29</sup> the accused was charged with contributing to juvenile delinquency on the basis that he performed an act of fellatio on a 15 year-old male. The accused was a 39 year-old male. At trial, the Crown applied successfully for an order that the public be excluded from the courtroom during the complainant's testimony, and that everyone under the age of 18 be excluded from the courtroom for the whole trial. The accused applied for an order of *mandamus* with *certiorari* in aid, arguing that the trial judge's exclusion order was improper in the circumstances. The Alberta Court of Queen's Bench dismissed the accused's application. Mr. Justice Cousey considered that the proper administration of justice required that the public be excluded during the period of the trial when the complainant gave his testimony.<sup>30</sup>

"I can see no need to exclude the public from the preliminary and trial in the interest of public morals but the public should be excluded in the interest of the proper administration of justice. There is sufficient evidence and information in the transcript to suggest to me that if the complainant is required to give his evidence before the public he would not be able to do so and it is in the interest of the administration of justice that all admissible evidence be before the Court and the public should therefore be excluded from the courtroom while the complainant is giving his evidence."

The *F.P. Publications* case<sup>31</sup> points up the relationship between who may be excluded from the trial and what may be published about the trial. The accused was charged with keeping a common bawdy-house, and the Crown presented as witnesses certain patrons who testified about the various services offered at the accused's establishment. The Crown requested and obtained an order excluding *Winnipeg Free Press* reporters from the courtroom, as the newspaper had refused to comply with a request not to publish the names of the witnesses. The Manitoba Court of Appeal ruled that the trial judge had no authority to make such an order. Chief Justice Freedman stated:

"[I]t was a misuse of s. 442(1) to prevent conduct that was not wrongful and that was an expression of freedom of the press on the theory that its prevention was required for the proper administration of justice. Stronger grounds than there emerge are required to warrant a departure from the principle of trial in open court. In misusing the section the learned trial judge acted in excess of jurisdiction and his order so made cannot stand."

## Summary

The Committee acknowledges the vital importance of keeping criminal trials open to public scrutiny. The several considerations which support this long-standing principle of the administration of justice have been well expressed by a Canadian jurist:<sup>32</sup>

An open trial provides some safeguard against unjust or unfair proceedings against an accused; it militates against the use by the executive of the courts to achieve its own ends; it reduces the possibility of any abuse of judicial power; it maximizes the chances of equal and impartial administration of justice to all accused persons; many aspects of the enforcement of criminal law, such as general abhorrence of certain acts or general deterrence, demand that the public be informed; witnesses who have to give their testimony in public will be more reluctant to give false evidence for fear of exposure. In general, of course, this merely means that it is in the interest not only of the accused and the prosecutor that a criminal trial be in public, but that it is in the interest of the public itself.

**In the Committee's view, the limited exceptions to this principle sanctioned by section 442(1) of the *Criminal Code* and by section 39 of the *Young Offenders Act* are both appropriate on policy grounds and sufficiently narrow to be defensible on constitutional grounds. However, the Committee concludes that, for sake of greater clarity these provisions should be amended in order to facilitate obtaining the full and spontaneous account of the child's evidence.** Where, for example, the presence of a public "gallery" in the courtroom would prevent a child or other young witness from giving as clear, full and spontaneous an account of his or her evidence as would be possible if his or her evidence was heard *in camera*, there should be express statutory authority for excluding the public.

The question of public access to child welfare proceedings is grounded in somewhat different considerations. As noted earlier, Canadian provinces and territories have taken widely varying positions on this question, in accordance with their differing views about the most workable model for resolving child welfare controversies and the most appropriate set-off between public scrutiny and institutional effectiveness. Particularly in light of the Committee's research findings that most children are not considered to be harmed by participating in criminal or child welfare proceedings, whether open or closed, the Committee considers it inadvisable to recommend a single, uniform approach to this issue in the context of child welfare proceedings. Even so, and for the reasons outlined above:

**The Committee recommends that the *Criminal Code*, the *Young Offenders Act* and each child welfare act or equivalent contain a provision authorizing a judge to proceed *in camera* where such a course is required in order to obtain a full and candid presentation of a child's testimony. The proper administration of justice requires that the "best evidence" of all parties be accessible to the judicial process.**

In the Committee's view, an emphatic change of attitude towards young sexual victims and young witnesses generally would do much to reduce the anxiety of the courtroom experience for children, for example:

1. The inculcation of a strong presumption on the part of parents, teachers, doctors, police officers, social workers, Crown attorneys and others that a child's allegation of sexual abuse is true, and that it warrants immediate investigation and follow-up.
2. The employment of police officers and social workers specially trained in the management of cases of child sexual abuse and in child interviewing techniques, and the continued support from such persons throughout the investigative and judicial stages.
3. The training of Crown attorneys in the special social and legal issues of child sexual abuse, and the use of such attorneys in all contemplated child sexual abuse prosecutions.
4. The thorough preparation of child witnesses for the courtroom experience, in a manner appropriate to the child's intellectual and emotional development.
5. Where possible, and consistent with the accused's procedural and constitutional rights, the provision of special court facilities enabling a young child's testimony to be elicited in a more informal legal atmosphere.

These steps, as well as others advocated elsewhere in this Report, would materially improve the opportunities for children to speak effectively in their own behalf.



## References

### Chapter 21: Public Access to Hearings

- <sup>1</sup> *The Child Welfare Act*, 1972, S.N. 1972, No. 37, s. 17.
- <sup>2</sup> *Family and Child Services Act*, S.P.E.I. 1981, c. 12, ss. 31 and 29(2).
- <sup>3</sup> *Children's Services Act*, S.N.S. 1976, s. 59(1).
- <sup>4</sup> *Child and Family Services and Family Relations Act*, S.N.B. 1980, c.C-2.1, s. 10.
- <sup>5</sup> *Youth Protection Act*, S.Q. 1977, c. 20, s. 82. See also *Code of Civil Procedure*, R.S.Q. 1977, c.C-25, s. 13.
- <sup>6</sup> *Child Welfare Act*, R.S.O. 1980, c. 66, s. 57. See also *Judicature Act*, R.S.O. 1980, c. 223, s. 82; and *Unified Family Court Act*, R.S.O. 1980, c. 515, s. 10.
- <sup>7</sup> *The Child Welfare Act*, S.M. 1974, c. 30, ss. 25(5) and 25(6).
- <sup>8</sup> *The Family Services Act*, R.S.S. 1978, c. F-7, s. 35.
- <sup>9</sup> *Child Welfare Act*, R.S.A. 1980, c.C-8, ss. 12(3) and 12(4).
- <sup>10</sup> *Provincial Court Act*, R.S.B.C. 1979, c. 341, s. 3.
- <sup>11</sup> *Child Welfare Ordinance*, R.O.Y.T. 1971, c.C-4, s. 94.
- <sup>12</sup> *Child Welfare Ordinance*, R.O.N.W.T. 1974, c.C-3, s. 105.
- <sup>13</sup> *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3.
- <sup>14</sup> (1981), 23 C.R. (3d) 289 (S.C.C.).
- <sup>15</sup> *Canadian Charter of Rights and Freedoms*, s. 2(b). See also s. 11(d) of the *Charter*.
- <sup>16</sup> (1983), 3 C.C.C. (3d) 515 (Ont. C.A.). But see *Re Edmonton Journal and A.G. for Alberta et al* (1983), 4 C.C.C. (3d) 59 (Alta. Q.B.).
- <sup>17</sup> *Young Offenders Act*, S.C. 1980-81-82-83, c. 110.
- <sup>18</sup> *Ibid.*, s. 39.
- <sup>19</sup> See generally *Re Armstrong and State of Wisconsin* (1972), 7 C.C.C. (2d) 331 (Ont. H.C.J.); *Re Regina and Grant* (1973), 13 C.C.C. (2d) 495 (Ont. H. C.J.); *Re Learn and the Queen* (1981), 63 C.C.C. (2d) 191 (Ont. H.C.J.); and *Re O'Callaghan and The Queen* (1982), 65 C.C.C. (2d) 459 (Ont. H.C.J.).
- <sup>20</sup> Emphasis added.
- <sup>21</sup> *Supra*, note 16.
- <sup>22</sup> (1978), 42 C.C.C. (2d) 121, at 123 (Alta. C.A.).
- <sup>23</sup> *R. v. Warawuk*, *ibid.*
- <sup>24</sup> *Canadian Charter of Rights and Freedoms*, s. 11(d). See also s. 2(b) of the *Charter*, and the decision of the Ontario Court of Appeal in *Re Southam Inc. and The Queen* (No. 1) (1983), 3 C.C.C. (3d) 515.
- <sup>25</sup> *Re F.P. Publications (Western) Ltd.* (1979), 51 C.C.C. (2d) 110 (Man. C.A.).
- <sup>26</sup> *R. v. Quesnel and Quesnel* (1979), 51 C.C.C. (2d) 270 (Ont. C.A.).
- <sup>27</sup> *Supra*, note 22.
- <sup>28</sup> (1978), 45 C.C.C. (2d) 560 (Alta. C.A.).
- <sup>29</sup> (1981), 62 C.C.C. (2d) 523 (Alta. Q.B.).
- <sup>30</sup> *Ibid.*, at 525.
- <sup>31</sup> *Supra*, note 25.
- <sup>32</sup> Mewett, *Public Criminal Trials* (1978-79), 21 Cr.L.Q. 199, at 199. See also Wright, *The Open Court: The Hallmark of Judicial Proceedings* (1947), 25 Can. Bar Rev. 721; and Beckton, *Freedom of Expression-Access to the Courts* (1983), 61 Can. Bar Rev. 101.



## Chapter 22

# Publication of Victims' Names

Chapter 21, *Public Access to Hearings*, dealt with the question: Who may attend legal hearings pertaining to sexual offences against young persons? This chapter addresses a related question, namely: What legal restrictions are placed on the publication of the names of parties to the proceeding (particularly victims) or of evidence presented at such hearings? The connection between these two issues is illustrated by the judicial accommodation to the press known as "the device":<sup>1</sup>

The media are on occasion dealt with by the courts as representatives of the public. It is a common judicial procedure, when excluding the public from the courtroom, to allow the media to remain with the understanding that they will not publish the proceeding, or else not identify certain information. This accommodation by the courts does not arise from an enforceable right of the press to attend, but from a genuine respect by the courts for the necessity and effectiveness of public review of the court processes. The public have a greater confidence in the administration of justice if the proceedings can be viewed, even if there is some restriction on publication.

This chapter reviews the various statutory provisions bearing on this issue in different proceedings and presents the Committee's research findings concerning the practices of a number of Canadian newspapers, major legal reporting services and Canadian courts in reporting information identifying the young victims of sexual offences.

Most Canadian provinces contain explicit provisions in their child welfare/child protection legislation prohibiting the publication of the identity of any child at the proceedings and of anything that would tend to disclose the identity of any child at the proceedings.<sup>2</sup> The Committee's review of the practices of Canadian newspapers and legal reporting services indicates that these provisions in child welfare laws are respected.

Sections 12(3) and 12(4) of the recently repealed *Juvenile Delinquents Act* provided that:

12(3) No report of a delinquency committed, or said to have been committed, by a child, or of the trial or other disposition of a charge against a child, or of a charge against an adult brought in the juvenile court under section 33 or under section 35, in which the name of the child or of the child's



parent or guardian or of any school or institution that the child is alleged to have been an inmate is disclosed, or in which the identity of the child is otherwise indicated, shall without the special leave of the court, be published in any newspaper or other publication.

(4) Subsection (3) applies to all newspapers and other publications published anywhere in Canada, whether or not this Act is otherwise in force in the place of publication. [Note: The federal *Juvenile Delinquents Act* did not apply in Newfoundland. See the Newfoundland *Welfare of Children Act*, R.S.N. 1970, c. 190, *as am.*, ss. 12 and 13.]

Several points should be noted about these provisions which were repealed in April, 1984. First, section 12(3) is directed at the child's identity; there is no restriction on publishing the name of an accused adult. Second, the prohibition is technically not absolute; where special leave of the juvenile court is obtained, such information may be published. In determining whether to grant special leave, the court should consider the welfare of the child, the community's best interest and the proper administration of justice.<sup>3</sup> Third, where the child is in no way identified, juvenile court proceedings may be reported without leave of the court.<sup>4</sup> Fourth, although the prohibition in section 12(3) extends to "any newspaper or other publication," section 12(3) can also be contravened where identifying information appears in the electronic media.<sup>5</sup> Finally, it has been held that the provisions in the *Juvenile Delinquents Act* that had prohibited the identification of children in delinquency proceedings did not offend the *Canadian Bill of Rights*.<sup>6</sup>

The *Young Offenders Act*, which came into force in April, 1984, also contains provisions prohibiting the identification of young offenders in the media. Section 38 of the *Young Offenders Act* provides:

38(1) No person shall publish by any means any report

- (a) of an offence committed or alleged to have been committed by a young person, unless an order has been made under section 16 with respect thereto, or
- (b) of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence in which the name of the young person, a child or a young person aggrieved by the offence or a child or a young person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person or child, is disclosed.

Anyone who contravenes this provision is guilty either of an indictable offence and liable to imprisonment for not more than two years, or of an offence punishable on summary conviction.<sup>7</sup>

Before considering the various sections of the *Criminal Code* that govern issues of publication, it should be noted that these provisions supplement the powers of courts (which vary depending on the "superior" or "inferior" status of the court) to sanction interferences by the news media with the proper administration of justice by way of the contempt of court power. Contempt of court may be committed either inside or outside the courtroom, but the most

common examples involving the media are instances of “constructive contempt,” where court proceedings are published in a manner which is considered to interfere with the administration of justice. The *sub judice* rule is the guiding consideration here: when a legal matter has come under the jurisdiction of a court (*sub judice*), the court’s proper adjudication of the matter should not be interfered with.<sup>8</sup> The common law powers of courts to punish for contempt of court in criminal proceedings, preserved by section 8 of the *Criminal Code*, are wider (although incapable of precise definition) than the specific statutory provisions in the *Code* relating to non-publication in stated circumstances.

Since this review is concerned mainly with restrictions on publishing the identities of sexual victims, other provisions in the *Criminal Code* relating to publication are only mentioned briefly.

- Where the Crown intends to “show cause” why detention of the accused or a conditional release of the accused is necessary, the accused can apply for a ban on publication of the evidence and information presented at the hearing, and the court must order it. The effect of the order is to ban publication from the time the order is made until the accused is either discharged, or his trial ended.<sup>9</sup>
- In reference to preliminary inquiries, where an accused so requests, the presiding judge shall order that there shall be no publication of any of the evidence until the accused is either discharged, or his trial ended.<sup>10</sup> Since section 467 bans only the *evidence* taken at the inquiry, “[it] would not be unlawful, where an order has been issued under s. 467, to publish the identity of *witnesses* appearing at the preliminary inquiry”, although “[such] reporting would always be subject not only to the laws of contempt, but also to the laws of defamation.”<sup>11</sup> Similarly, section 470 prohibits the publication of a report of any admission or confession tendered in evidence at a preliminary inquiry until the accused is either discharged, or his trial ended.
- Section 162 of the *Criminal Code* prohibits the publication, in relation to judicial proceedings and with specified exceptions, of “any indecent matter or indecent medical, surgical or physiological details, being matter or details that, if published, are calculated to injure public morals.”

## Publishing the Identity of the Accused

The *Criminal Code* contains no express statutory authority for prohibiting the publication or broadcast of an accused’s identity in a criminal proceeding. Although it has been held that a superior Court has the power to order that the name of an accused not be published,<sup>12</sup> two recent decisions illustrate the manifest judicial reluctance to invoke this power. In a Newfoundland case,<sup>13</sup> it was held that a magistrate could not ban the publication of the identity of the accused even on the compassionate grounds of avoiding a perilous shock to the accused’s sick father. The court stated that the magistrate’s power to exclude the public from the courtroom under section 442 did not extend to prohibiting

the publication of the identity of the accused or of other evidence from which he could be identified.<sup>14</sup>

The case of *R. v. P.*<sup>15</sup> well illustrates the principle that only in the most extraordinary circumstances will the court order a ban on publishing the name of an accused. In Toronto in 1978, a man was arrested for soliciting for the purpose of prostitution. Although he had intended to enter a guilty plea, the presiding judge invited him to plead not guilty as the judge considered that a male customer could not be convicted of soliciting under section 195.1 of the *Code*. The accused then entered a not guilty plea and the charge against him was dismissed. The Crown appealed the decision and indicated that this case would be an appropriate one for testing whether a male who was not a prostitute could be convicted under section 195.1. Because the accused had not originally wanted to engage in the process in the first place and because the Crown was using his predicament as a “test case”, the court ordered that the accused not be identified in the media and that he be known only as Mr. P.

When the order banning identification came up for review, the reviewing judge held that the discretion to make such an order should be exercised only in extraordinary circumstances and only when it is necessary to depart from the principle of a completely open trial. Mr. Justice Steel stated:

If normal embarrassment is to be the [criterion] of suppressing the [name] of an individual then there would be such an argument in almost every case that is brought before the courts. Against this must be weighed the right of the public to know the facts so that they honestly, fairly and responsibly assess those facts without speculation.

The court lifted the ban on publication of the accused’s identity and it was published in the media.

On the basis of its review, the Committee considers that, where the publication of an accused’s identity will serve to identify his or her alleged sexual victim (for example, in prosecutions for incest), the young *victim’s* identity can only effectively be protected by prohibiting the identification of the *accused* in the media and in the law reports. The larger, more general issue of identification of accused persons in the media prior to their conviction or guilty plea is not within the Committee’s Terms of Reference.

## Publishing the Identity of the Complainant

The *Criminal Code* contains two basic provisions restricting the publication of the identity of a sexual victim “in any newspaper or broadcast.” Section 246.6 provides that, where an accused who is charged with a “sexual assault” offence under sections 246.1, 246.2 or 246.3 seeks to adduce evidence of the sexual activity of the complainant with persons other than the accused:



246.6(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

246.6(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

246.6(5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.

246.6(6) In this section, “newspaper” has the same meaning as in section 261.

Although pertinent in this context, the provisions of section 246.6 are directed more at the evidence adduced at such a hearing than at protecting the identity of the complainant *per se*.

A more specific provision authorizing the non-publication of the identities of complainants in sexual offence cases appears in section 442 of the *Criminal Code*, which provides:<sup>16</sup>

442(3). Where an accused is charged with an offence mentioned in section 246.4, the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

442(3.1). The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3).

442(4). Every one who fails to comply with an order pursuant to subsection (3) is guilty of an offence punishable on summary conviction.

442(5). In this section, “newspaper” has the same meaning it has in section 261.

The offences referred to in section 246.4 of the *Criminal Code* are: incest (s. 150); gross indecency (s. 157); sexual assault (s. 246.1); sexual assault with a weapon, threats to a third party, or causing bodily harm (s. 246.2); and aggravated sexual assault (s. 246.3). “Newspaper” in section 261 of the *Criminal Code* is defined as meaning “any paper, magazine or periodical containing public news, intelligence or reports of events, or any remarks or observations thereon, printed for sale and published periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts or numbers, and any paper, magazine or periodical printed in order to be dispersed and made public, weekly or more often, or at intervals not exceeding thirty-one days, that contains advertisements, exclusively or principally.”

Before considering the adequacy of these legal provisions in protecting the privacy of young sexual victims, the Committee's research findings are presented concerning the practices of Canadian newspapers and legal reporting services in publishing the identities of young victims of sexual offences.

## Naming of Young Victims of Sexual Offences in Canadian Newspapers

In order to assess the extent to which Canadian newspapers respect the privacy of young complainants in cases involving sexual offences, the Committee monitored the practices of 34 leading and smaller newspapers. Over a period from mid-May, 1982 to mid-May, 1983, the Committee reviewed 2806 news articles concerning sexual offences and related matters. Information was obtained concerning the details reported in each story, with the primary focus being on those stories in which the names of sexual complainants had been reported. The newspapers reviewed were:

### *Newfoundland*

Corner Brook Western Star  
St. John's Telegram

### *Prince Edward Island*

Charlottetown Guardian

### *Nova Scotia*

Halifax Chronicle-Herald  
Sydney Cape Breton Post

### *New Brunswick*

Fredericton Gleaner  
Moncton L'Evangeline  
New Brunswick Telegraph-  
Journal

### *Quebec*

Le Devoir  
Le Dimanche Matin  
The Gazette  
La Presse

### *Ontario*

Barrie Examiner  
Hamilton Spectator  
Kingston Whig-Standard  
London Free Press

### *North Bay Nugget*

Ottawa Citizen  
Owen Sound Sun-Times  
Thunder Bay Chronicle-  
Journal  
Toronto Globe and Mail  
Toronto Star  
Toronto Sun  
Windsor Star

### *Manitoba*

Thompson Citizen  
Winnipeg Free Press

### *Saskatchewan*

Regina Leader Post

### *Alberta*

Calgary Herald  
Edmonton Journal  
Lethbridge Herald

### *British Columbia*

Prince George Citizen  
Vancouver Sun  
Victoria Colonist  
Victoria Times

The findings of this review clearly indicate that these Canadian newspapers seldom reported the names of young victims of sexual offences. Information tending to identify sexual complainants was given in only 11 news stories (0.4 per cent). Of these, three stories concerned American cases in which the names of sexually abusive parents or step-parents were reported. Six stories

reported the identities of young complainants in Canadian cases. These stories included reports of:

- A sexual assault involving a 15 and a 16 year-old female.
- The sexual assault by a father of his eight year-old daughter (father's name reported).
- A case in which the father repeatedly committed incest with his daughter from the time the girl was 11 until she was 18 years-old (father's name reported).
- A case in which the offender indecently assaulted his two step-daughters, aged 13 and 16 at the time of the trial, over a five year period (offender's name reported).
- A case in which the accused was acquitted of living on the avails of the prostitution of his juvenile daughter and a 14 year-old boy (accused's name reported).

In addition, two stories were found in which sexual complainants were named, but whose ages were not reported. In one of these cases, the person accused of the sexual offence was acquitted.

A number of news reports contained information which might tend to identify the young victims of sexual offences. These included six stories which named the street or neighbourhood where the complainant or complainants lived. Nine stories from different newspapers reported allegations of sexual abuse involving young males at a group home. The reports included the name and location of the group home, the ages of the alleged victims, their ethnicity and the region from which they originally came.

**The Committee found that the practice of Canadian newspapers which were reviewed with respect to restricting the publication of information which might serve to identify young victims of sexual offences was one of commendable restraint and circumspection.** With few exceptions, the identities of young victims were not reported.

## Naming of Young Victims of Sexual Offences in Canadian Legal Reporting Services

Early in the Committee's work, it became apparent that young victims of sexual offences were sometimes identified by name in the reports of legal judgments published by various commercial reporting services. These reporting services enjoy an extensive readership among judges, lawyers, law teachers and law students, and frequent resort to them is inevitable for anyone engaged in or preparing for the practice of law. Since the reasons for judgment of Canadian courts constitute an important primary source of what the law is in a particular area, the contents of these reporting services are a staple of professional life for most members of the legal community. For example, where the victim of a sexual offence is identified by name in a leading case on the criminal law of sexual



offences, potentially thousands of lawyers and aspiring lawyers are apt, at some time or another, to read about it. This invasion of the victim's privacy is compounded by the fact that legal judgments in which the names of sexual victims are disclosed are preserved, in bound volumes to which anyone has access, virtually indefinitely.

In order to document the extent of this problem, the research conducted by the Committee included:

1. A survey, particularly of cases reported between 1970 and 1982, of the reported case law pertaining to sexual offences.
2. The editor of each major legal reporting service and the Chief Justice or Chief Judge of every Canadian court having criminal jurisdiction was requested to inform the Committee of its policy in this regard.

## Policies of Legal Reporting Services

The Committee contacted the major Canadian legal reporting services in order to obtain statements of policy concerning the reporting of cases involving the young victims of sexual offences. The reporting services contacted were:

- |   |                                |
|---|--------------------------------|
| • Newfoundland and Prince Edward Island Law Reports | • Alberta Law Reports          |
| • Nova Scotia Law Reports                           | • British Columbia Law Reports |
| • New Brunswick Law Reports                         | • Canadian Criminal Cases      |
| • Recueils de Jurisprudence du Quebec               | • Criminal Reports             |
| • La Revue Legale                                   | • Dominion Law Reports         |
| • Ontario Law Reports                               | • Federal Court Reports        |
| • Manitoba Law Reports                              | • Supreme Court Reports        |
| • Saskatchewan Law Reports                          | • Weekly Criminal Bulletin     |
|   | • Western Weekly Reports       |

The replies received from these legal reporting services indicate that, in general, it is not their policy to publish information which may identify children and youths in cases involving sexual offences. The statements received included:

- The policy in this office is to identify sexual complainants by initials only. This is particularly true of children, whose identities we protect in any case in which identification seems likely to prove detrimental to the child's interests, including all juvenile delinquency and child protection cases. In cases which are not clear-cut, we prefer to err on the side of caution, using initials rather than names. On the basis of these guidelines, the identity of a child victim of a sexual offence should always be protected. I can conceive of no situation which would justify an exception to this general rule.

For a number of years, our policy was to follow the practice of the courts,

deleting names only where the courts did so. Our current policy of protecting children and victims of sexual offences has evolved over the past seven or eight years, and has been applied fairly consistently since at least 1979. However, until recently, this policy was informal and was often a discretionary matter. In the past year, we have attempted to develop firm rules and to apply them consistently to all our reports. While there will always be an element of discretion in determining how far we should go in protecting the identities of the innocent, our present rules favour the deletion of names and other information identifying the victims of sexual offences.

- Our policy with respect to the publication of the names of children and youths and other sex complainants is simply that we comply with the provisions of the *Juvenile Delinquents Act* where the identity of a youthful accused is involved and we, of course, would delete the name of any complainant where the name had been deleted from the judgment before we receive it or when we have been requested to do so by the court. As you are no doubt aware with the recent amendments of the *Criminal Code*, the occasions on which the Court will make an order prohibiting the publication of the name of the complainant have increased and we, of course, comply with such orders where we are made aware of them.

One matter that would be of assistance to us and which you may consider when making your recommendations is for the Courts to indicate clearly in some portion of the judgment whether or not an order has been made prohibiting the publication of the name of the complainant.

- The policy with respect to the identity of a complainant is to report what is contained in the judgment of the court. If the judgment of the court does not contain the name, or wishes the name not to be revealed, then it will not be revealed in the reported decision. There are no exceptions to this practice.
- Our policy with respect to this issue is not to reveal the identity, or any information that might disclose the identity, of complainants of sexual offences. There are no exceptions to this policy, and we take every precaution possible to ensure complete anonymity of sexual complainants.

We rely primarily upon the judges who, in writing their judgments, normally would not identify a child or youth where it might prove embarrassing in the future. In some instances, we will take the initiative ourselves and use initials in place of a name.

## Policies of Courts

The Committee contacted the chief judicial officers of 37 courts across Canada requesting information concerning statements of policy established with respect to identifying a complainant or children and youths in connection with sexual offence cases. The following replies are representative of the statements received.

- [This Court] has no uniform policy requiring the use of initials rather than names in either the style of cause or in the text of judgments for cases involving children or youths. The court considered the issue in 1975 and

conducted a review of cases since 1940 in which initials had been used. The cases considered included several related to infants and juveniles, five custody decisions of which three involved sexual perversion or unnatural offences. English practice also was considered.

The members of the Court are aware of the consequences of identifying a complainant or children and youths in connection with sexual offence cases, and where valid reasons exist, will delete the names of such persons or substitute initials. Factors to be considered include the nature of the sexual offence, the relationship, if any, between accused and complainant and the age of the child.

Members of the Court have become increasingly aware of this issue in recent years.

The Court may only be governed by the relevant provisions of the criminal law and the decisions of the various courts interpreting those provisions. In each individual case, the Court will hear evidence and submissions of counsel regarding identification of complainants and will make its decision on the basis of relevant statutory provisions and case law.

- [The Court follows] the procedures set out in section 442(3) of the *Criminal Code*. Some judges may have their own individual policies regarding the naming of the child, but there is no overall policy and the matter is left to the discretion of each judge.
- The Court has no general policy concerning the publication of the identities of complainants in sexual offence cases.

As an appellate court, [this Court] generally deals with points of law, so that it often finds it possible to dispose of these cases without listing the facts. Also, the Court notes that in criminal proceedings the Queen or the Crown, represented by one of Her officers, is the complainant, and not the victim of a sexual act. When the Court does find it necessary to refer to the victim, its practice is to use only the child's given name.

- [The Court] has no established policy concerning the reporting of names of children and youth. Publication is in the hands of certain private editors.
- The Court has no established policy with respect to naming the complainants in cases involving sexual offences against children.

When appeals are heard in open court, no great emphasis is placed on the identity of the complainant, but where the accused is a child's father or mother, it becomes almost impossible to conceal that name.

- [The Court] has no policy concerning publication of the names of complainants in sexual offence cases. The judges deal with this matter on a case-by-case basis, and in consideration of the relevant *Criminal Code* provisions.

The members of the Court are aware of the issue and in most instances would not find it necessary to mention the name of the complainant in giving reasons for judgment.



- There is no established Court policy concerning the publication of the names of juveniles. In the Criminal Division, judges and journalists are conscious of the fact that the names of juveniles involved in court proceedings are not to be published. Occasionally, where an adult is convicted of an offence, a juvenile's name may appear in print, but this is rare and probably results from inexperience of a media reporter.
- Certainly there is no policy concerning publication of the identity of complainant and, indeed, I am doubtful that there should be. In my view each case must be dealt with according to the particular situation.

[This] Court primarily hears criminal cases and the identification of complainants is governed by the *Criminal Code*.

- There is no special policy concerning the publication or concealment of the name of a child who has been the victim of a sexual offence. There is little that the Court of Appeal can do to prevent disclosure, since by the time a case reaches it, the victim's name has already appeared on the indictment and very likely, has been stated in the proceedings and decision of the court below. In its judgments, the Court of Appeal could use an initial in place of the child's name, but even on this there is no defined policy. Perhaps there should be.
- Since 1974 the policy of . . . [this Court] . . . has been to refrain in written judgments or opinions from giving the names or, so far as possible, other particulars identifying persons subjected to sexual offences.

## Reported and Unreported Cases

**On the basis of its review, the Committee identified 189 cases in which the names of young Canadian victims of sexual offences had been disclosed in either the major legal reporting services or court transcripts.** In the latter category, the cases reviewed constituted those which had not been published by any reporting service when the Committee conducted its review. In each of these cases, information was given in the Court's decision which either identifies or tends to identify the complainant. Since these decisions were not published by legal reporting services, the identification of the complainant must be attributed to the courts themselves rather than to the editors, publishers or to any other party.

In the examples given below, the use of an asterisk(\*) indicates that, because the complainant was related to the accused, the 'style of cause' serves to identify the complainant as well as the accused. In these instances, in order to protect the complainant's privacy, the Committee has deleted the accused's name from the style of cause.

## REPORTED CASES

### *Offence: Rape*

*R. v. Bresse, Vallieres and Theberge* (1978), 48 C.C.C. (2d) 78 (Que. C.A.).

Complainant named. Age: 14. A friend of the complainant also named.

*R. v. Trottier* (1981), 58 C.C.C. (2d) 289 (B.C.C.A.).

Both complainants named. Ages: both 16. One complainant was raped and the other indecently assaulted.

*R. v. D.\** (1981), 23 C.R. (3d) 56 (Ont. C.A.).

The two complainants' names indicated by style of cause. Accused's and complainant's address reported in a quotation from indictment. Ages: 6 and 17.

### *Offence: Incest*

*R. v. M.\** (1980), 55 C.C.C. (2d) 193 (Ont. C.A.).

Complainant's name indicated by style of cause, but not reported in text of decision. Decision concerned issue of spousal competence and compellability; accused's wife named.

*R. v. C.\** (1982) 69 C.C.C. (2d) 81 (Ont. C.A.).

Complainant's name indicated by style of cause, but not reported in text of decision. Age: 13.

*R. v. I.\** (1976), 1 A.R. 27 (C.A.).

Both female complainants (daughters of the accused) named. Ages: 17 and 19 at date of the appeal. Accused's other two daughters, aged 10 and 12, also named.

### *Offence: Sexual intercourse with a female under 14, and sexual intercourse with a female between 14 and 16*

*R. v. Kirby* (1976), 24 Nfld. & P.E.I.R. 260 (Nfld. Prov. Ct.).

Complainant named in a quotation from the indictment. Age: 13. In text of the decision, she is stated to be "relatively well developed physically".

*R. v. V.\** (1972), 18 C.R.N.S. 190 (B.C.C.A.).

Complainant named in a quotation from the indictment. Age: Between 14 and 16.

*R. v. Belanger* (1979), 46 C.C.C. (2d) 266, 8 C.R. (3d) S-10 (Ont. C.A.).

Complainant named. Age: 12.

*R. v. Quesnel and Quesnel* (1979), 51 C.C.C. (2d) 270 (Ont. C.A.).

Charges: sexual intercourse with a female under 14, sexual intercourse with a female between 14 and 16, gross indecency and indecent assault on a female.

All four complainants named in a quotation from the indictment. Ages: three complainants were under 14, one was between 14 and 16.

*R. v. G.\**, (1980), 53 C.C.C. (2d) 414 (Ont. C.A.).

Complainant named in quotation from the indictment. Age: between 14 and 16.

### *Offence: Indecent assault on a female*

*R. v. Fletcher* (1982), 1 C.C.C. (3d) 370 (Ont. C.A.).

Complainant named. Age: 13. Seven other children also named, one of whom was alleged to have been indecently assaulted by the accused.

*Re Stillo and the Queen* (1981), 56 C.C.C. (2d) 178 (Ont. H.C.).

Complainant named in a quotation from the indictment. Age: 7.

### *Offence: Gross indecency*

*Re Poirier and the Queen* (1981), 62 C.C.C. (2d) 452 (Que. C.A.).

Both male complainants named. Ages: both 13.

*R. v. B.\** (1982), 37 A.R. 177 (C.A.).

Both complainants named. Ages: 10 and 14 when the offences first were committed.

*R. v. Bennett* (1981), 30 Nfld. & P.E.I.R. 512, 84 A.P.R. 512 (Nfld. C.A.).

Male complainant named. Age: 14.

### *Offence: Indecent assault on a male*

*R. v. Robertson* (1982), 39 A.R. 273 (C.A.).

Complainant named. Age: not reported, but complainant is stated to have been an infant when indecently assaulted. Also reported: the name of a female whom the accused kidnapped and sexually molested. Age: 3.

*R. v. Troughton* (1982) 3 C.C.C. (3d) 79 (Man. C.A.).

Both complainants named. Ages: 7 and 9.

*R. v. Hopkins* (1977), 23 N.S.R. (2d) 550 (C.A.).

Complainant named. Age: 13.

*R. v. Pilgrim* (1981), 64 C.C.C. (2d) 523 (Nfld. C.A.).

Both complainants named. Ages: 16 and 17.



## UNREPORTED CASES

### *Offence: Incest*

*R. v. W.\**, June 24, 1980 (Ont. S.C.).

Charges: incest, indecent assault on a female. The complainant's name was indicated by the style of cause, in a quotation from the indictment, and in the text of the decision. The complainant was the daughter of the accused. Age: 6.

*R. v. P.\**, September 21, 1981 (Que. C.A.).

The complainant's name was indicated by the style of cause, in a quotation from the indictment, and in the text of the decision. The complainant was the daughter of the accused. Age: 11.

*R. v. M.\**, February 12, 1979 (B.C.C.A.).

The complainant's name was indicated by the style of cause and the text of the decision. The complainant was the daughter of the accused. Age: 15.

*R. v. H.\**, June 3, 1981 (B.C.C.A.).

Charges: incest, gross indecency. The name of one of the complainants was indicated by the style of cause. He was the son of the accused. Age: 13.

*R. v. J.\**, December 1, 1976 (Man. C.A.).

The name of the complainant was indicated by the style of cause. The complainant was the daughter of the accused. Age 12.

*R. v. S.\**, October 20, 1979 (Man. C.A.).

The names of the complainants were indicated by the style of cause. They were the daughters of the accused. Ages: 12 and 15.

### *Offence: Sexual intercourse with a female under 14, and sexual intercourse with a female between 14 and 16*

*R. v. Fogarty*, January 27, 1981 (Ont. S.C.).

Charges: sexual intercourse with a female under 14, indecent assault on a female. The complainant was named. Age: 13.

*R. v. Kirby*, November 15, 1976 (Nfld. D.C.).

The complainant was named in a quotation from the indictment but not in the text of the decision. Age: 13.

### *Offence: Indecent assault on a female*

*R. v. Burke*, November 26, 1976 (Ont. C.A.).

The complainant was named in the quotation from the indictment and in the text of the decision. Age: 9.

*Thibeau v. The Queen*, April 20, 1979 (Ont. C.A.).

Charges: common assault, indecent assault, gross indecency. The three complainants were named. Ages: 9, 10 and 11.

*R. v. B.\**, March 30, 1981 (Ont. C.A.).

Complainant's name indicated by style of cause, but not reported in text of decision. The complainant was the daughter of the accused. Age: 12.

*R. v. Hudebine*, January 22, 1979 (Ont. D.C.).

The three complainants were named. Ages: 12, 15 and 16.

*R. v. Cloutier*, May 13, 1981 (Ont. D.C.).

The complainant was named. Age: 14.

*R. v. H.\**, October 5, 1981 (Ont. D.C.).

The complainant's name was indicated by the style of cause. She was the daughter of the accused. Age: 15.

*R. v. Neiser*, March 2, 1982 (Ont. D.C.).

The complainant was named. Age: 12.

*R. v. Wells*, October 19, 1977 (Alta. C.A.).

The complainant was named in a quotation from the indictment. Age: 13.

*R. v. Lunn*, November 18, 1981 (B.C.C.A.).

The two female complainants were named. Ages: 12 and 13.

*R. v. I.\**, August 25, 1980 (P.E.I. Prov. Ct.).

The complainant's name was indicated by the style of cause. She was the sister of the accused. Age: 16.

### *Offence: Gross indecency*

*R. v. Bennett*, March 3, 1981 (Nfld. C.A.).

The complainant was named. Age: 14.

*R. v. Gendreau*, October 2, 1979 (Man. Co. Ct.).

Charges: gross indecency, buggery, indecent assault on a male. The complainant's name was given. Age: started when the complainant was 11 and ended when he was 16.

*R. v. Saunders*, February 18, 1982 (B.C.C.A.).

Charges: gross indecency, assault with intent to commit buggery. The complainant was named. Age: 13.

### *Offence: Indecent assault on a male*

*R. v. White*, October 4, 1978 (Ont. Co. Ct.).

The complainant was named. Age: 16.

*R. v. Nelson*, May 28, 1980 (Man. C.A.).

Charges: indecent assault on a male, gross indecency. The three complainants were named. Ages: 9, 12 and 13.

*R. v. Racine*, December 10, 1981 (Ont. Co. Ct.).

The complainant was named. Age: 12.

### *Offence: Unlawful intercourse*

*R. v. O.\**, December 1, 1976 (Man. C.A.).

The complainant's name indicated by the style of the cause. She was the step-daughter of the accused. Age: 9.

*R. v. Tomigo*, June 30, 1981 (Ont. C.A.).

The three complainants were named in a quotation from the indictment and in the text of the decision. Ages: under 14.

The Committee's summary findings listed in Table 22.1 indicate that about three in five cases (58.7 per cent) in which complainants were identified occurred between 1970 and 1982. Between 1980 and 1982, there were 54 cases, averaging 18 cases each year which were equally divided between reported and unreported cases.

The types of cases in which children and youths were identified were:

Type of Sexual Offence	Number	Per Cent
Rape	36	19.0
Attempted rape	3	1.6
Incest	33	17.5
Sexual intercourse with female under 14, and 14 but under 16	27	14.3
Indecent assault female	22	11.6
Gross indecency	13	6.9
Indecent assault male	12	6.4
J.D.A., section 33	4	2.1
Other offences	39	20.6
TOTAL	189	100.0

About nine in 10 of the young complainants who were named were females (88.4 per cent) and the remainder were males (11.6 per cent). Included in the 'Other' category of offences were: unlawful intercourse, seduction under promise of marriage, seduction of a female between ages 16 and 18, sexual intercourse with the feeble-minded and corruption of children.



Table 22.1  
The Naming of Young Victims of Sexual Offences in  
Judgments of Canadian Courts

Level of Court	Year of Occurrence							
	Before 1970		1970-79		1980-82		Total	
	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases
<i>Newfoundland</i>								
• Court of Appeal	—	—	—	—	2	1	2	1
• Supreme Court, Trial Division	—	—	—	—	—	—	—	—
• Provincial Court	—	—	1	—	—	—	1	—
• District Court	—	—	1	—	—	—	1	—
<i>Prince Edward Island</i>								
• Supreme Court	—	—	—	—	1	—	1	—
• Provincial Court	—	—	—	—	—	1	—	1
<i>Nova Scotia</i>								
• Supreme Court, Appeal Division	9	—	6	3	1	—	16	3
• Supreme Court, Trial Division	4	—	—	—	—	—	4	—
• Provincial Court	—	—	—	—	—	—	—	—
<i>New Brunswick</i>								
• Court of Appeal	2	—	—	—	—	—	2	—
• Supreme Court/ Court of Queen's Bench	1	—	—	—	—	—	1	—

(continued ...)

# The Naming of Young Victims of Sexual Offences in Judgments of Canadian Courts

Level of Court	Year of Occurrence							
	Before 1970		1970-79		1980-82		Total	
	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases
<i>Quebec</i>								
• Court of Appeal	8	—	4	—	3	1	15	1
• Superior Court/ Court of Queen's Bench	3	—	—	—	—	—	3	—
• Court of Sessions	1	—	—	—	—	—	1	—
<i>Ontario</i>								
• Supreme Court/ Court of Appeal	12	—	9	6	7	4	28	10
• Supreme Court/ High Court of Justice	—	—	2	—	1	3	3	3
• Provincial Court	—	—	—	—	—	1	—	1
• County Court	1	—	—	2	—	—	1	2
• District Court	—	—	—	1	—	3	—	4
<i>Manitoba</i>								
• Court of Appeal	3	—	—	3	2	2	5	5
• Court of Queen's Bench	1	—	—	—	—	—	1	—
• Provincial Court	—	—	—	—	—	1	—	1
• County Court	—	—	1	—	1	1	2	—
<i>Saskatchewan</i>								
• Court of Appeal	6	—	3	—	1	—	10	—
• Supreme Court/ Court of Queen's Bench	1	—	—	—	—	—	1	—
• District Court	1	—	—	—	—	—	1	—

Level of Court	Year of Occurrence							
	Before 1970		1970-79		1980-82		Total	
	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases
<i>Alberta</i>								
• Court of Appeal	6	—	3	—	5	1	14	1
• Court of Queen's Bench/Supreme Court	—	—	1	—	—	—	1	—
• Provincial Court	—	—	—	1	—	1	—	2
• District Court	—	—	1	1	1	—	2	1
<i>British Columbia</i>								
• Court of Appeal	8	—	3	1	1	4	12	5
• Supreme Court	2	—	1	1	—	1	3	2
• Provincial Court	—	—	—	—	—	—	—	—
• County Court	—	—	—	—	—	2	—	2
<i>Yukon</i>								
• Court of Appeal	1	—	—	—	—	—	1	—
<i>Northwest Territories</i>								
• Supreme Court	2	—	—	—	—	—	2	—
<i>Canada</i>								
• Supreme Court of Canada	6	—	1	—	1	—	8	—
• Court Martial Appeal Court of Canada	—	—	—	1	—	—	—	1
TOTAL	78	—	37	20	27	27	142	47



It is clearly evident from the findings that, while cases in which children and youths were named are notably absent in recent years for a number of Canadian courts, the dimensions of this problem are national in scope. **With respect to the likelihood of being named, the young complainants of sexual offences are at greater risk of being identified in the published accounts of legal reporting services and the transcripts of court decisions than they are of such disclosures being made in the nation's newspapers.**

Particularly disturbing in regard to the naming of young complainants are the performances of provincial Courts of Appeal, given their prominent status in Canadian law and the precedential value of their criminal law judgments. Of the 111 cases between 1970 and 1982 identifying young complainants of sexual offences, over two-thirds (68.5 per cent) involved decisions of Courts of Appeal. As a general rule, the higher the level of court, the more likely it is that its criminal law judgments will be commercially reported, and hence the more likely that these judgments (and the names of sexual victims identified therein) will reach a wide readership in the legal community. The Committee's research findings indicate that several provincial Courts of Appeal in Canada have been careless and shown little sensitivity to this issue.

## Summary

Since only a fairly comprehensive review of cases in which young victims of sexual offences were identified was conducted for the period between 1970 and 1982, the findings presented constitute a conservative estimate of the extent of this problem. In considering the implications of the findings, however, it is pertinent also to consider earlier instances in which such disclosures were made. For all persons named in these legal documents, a durable and accessible record has been established which discloses their identities for the remainder of their lives, whether they are youths or adults.

**On the basis of their statements of policy, the Committee is aware that judges and legal editors are becoming attentive to this problem and seeking to act accordingly. However, in this regard there can be no doubt that existing safeguards are ineffective and that the overall record of legal reporting services and Canadian courts is unsatisfactory.**

**In the Committee's judgment, this practice which may be harmful to children is an unacceptable invasion of their privacy. It should cease.**

Although the commercial reporting of legal decisions involves both the courts and the legal reporting services, the responsibility for ensuring that the identities of victims of sexual offences are not disclosed lies, in the Committee's opinion, primarily with the courts and with their administrative personnel. If appropriate deletions are made "at the source," there is no possibility that victims of sexual offences will subsequently be identified in commercially published legal reports, which are dependent on this source. In the Committee's view, this responsibility of the courts should be given express statutory force by

way of immediate amendments to the *Criminal Code*. The Committee's research findings indicate that the record of provincial family courts, acting under express statutory guidelines in provincial enactments, is exemplary in this regard; it is not unreasonable to assume that Canadian courts of criminal jurisdiction would be equally attentive in the face of a clear directive from Parliament.

Accordingly, the Committee recommends that the *Criminal Code* be amended to provide that:

1. In relation to any sexual offence contained in Part IV, Part V, or Part VI of the *Criminal Code*, no one shall publish any report in which the Christian name or surname of the child, or in which any information serving to identify the child, is disclosed.
2. "Information serving to identify the child" includes, but is not restricted to:
  - (i) the name of the offender, where the offender is biologically or legally related to the child, or has the same name as the child;
  - (ii) the address of the accused or the child;
  - (iii) the school that the child attends, or the child's place of employment;
  - (iv) the address or location where the offence is alleged to have been committed; and
  - (v) the names of any witnesses whose relationship to the child or to the accused might give an indication of the child's identity.
3. The prohibition referred to in point (1) above is automatic, and does *not* require an application by the complainant, the Crown or the accused.
4. The prohibition attaches immediately upon either the laying of an information against the accused, the preferring of an indictment against the accused, or the arrest of the accused, whichever occurs first.
5. The prohibition is of indefinite duration, and attaches to all stages of the proceedings.
6. The prohibition extends to the print media, the electronic media, published court transcripts and the legal reporting services.
7. Any one who fails to comply with this provision is guilty of an offence punishable on summary conviction.

(Implementation of these recommendations will require consequential amendments to sections 246.6, 261, 442, 457.2, and 467 of the *Criminal Code*, and to sections 38 and 16 of the *Young Offenders Act*).

The Committee further recommends that each court having criminal jurisdiction in Canada designate an officer whose responsibility it is to ensure that these provisions are complied with, and that each legal reporting service in Canada do likewise.

In the judgment of the Committee, prompt implementation of these recommendations will help to ensure that children and youths who have been victims of sexual offences are treated by the legal system with the respect and consideration that is due to them.

## References

### Chapter 22: Publication of Victims' Names

- <sup>1</sup> Robertson, *Courts and the Media* (Toronto: Butterworth, 1981) at 167-68.
- <sup>2</sup> *Newfoundland: Welfare of Children Act*, R.S.N. 1970, c. 190, *as am.* S.N. 1973, c. 48, ss. 12 and 13.
- Prince Edward Island: Family and Child Services Act*, S.P.E.I. 1981, c. 12, s. 48.
- Nova Scotia: Children's Services Act*, S.N.S. 1976, c. 8, s. 59(2).
- New Brunswick: Child and Family Services and Family Relations Act*, S.N.B. 1980, c.C-2.1, s. 10.
- Quebec: Youth Protection Act*, S.Q. 1977, c. 20, s. 83.
- Ontario: Child Welfare Act*, R.S.O. 1980, c. 66, s. 57(7).
- Alberta: Child Welfare Act*, R.S.A. 1980, c.C-8, ss. 4 and 5.
- British Columbia: Provincial Court Act*, R.S.B.C. 1979, c. 341, s. 3.
- <sup>3</sup> *Re Proulx and The Queen* (1975), 27 C.C.C. (2d) 44 (Ont. Prov. Ct.). See also *Re R (M.J.), an infant*, [1975] 2 All E.R. 749.
- <sup>4</sup> *Re Proulx and The Queen*, *ibid.*, and see generally Robertson, *supra*, note 1 at 225-26.
- <sup>5</sup> *Re A.G. Man. and Radio O.B. Ltd.* (1976), 31 C.C.C. (2d) 1 (Man. Q.B.). That the prohibition on publishing a child's identity in delinquency proceedings extends to the electronic media is implicit in the Supreme Court of Canada decision in *C.B. and the Queen* (1981), 3 C.R. (3d) 289.
- <sup>6</sup> *Re Juvenile Delinquents Act* (1975), 29 C.C.C. (2d) 439 (Ont. Prov. Ct.); *Re Proulx and the Queen*, *supra*, note 3.
- <sup>7</sup> *Young Offenders Act*, S.C. 1980-81-82, c. 110, s. 38(2).
- <sup>8</sup> Robertson, *supra*, note 1 at 23.
- <sup>9</sup> *Cr. Code*, s. 457.2. See *Re Forget and The Queen* (1982), 65 C.C.C. (2d) 373 (Ont. C.A.).
- <sup>10</sup> *Cr. Code*, s. 467. In *R. v. Banville* (1983), 3 C.C.C. (3d) 312 (N.B.Q.B.), it was held that s. 467 is not inconsistent with the *Charter of Rights and Freedoms*.
- <sup>11</sup> Robertson, *supra*, note 1 at 202 (emphasis added).
- <sup>12</sup> *R. v. P.* (1978), 41 C.C.C. (2d) 377 (Ont. H.C.J.). See also *Re Regina v. Strupp et al.* (1982), 2 C.C.C. (3d) 111 (Ont. H.C.J.).
- <sup>13</sup> *Re Firth* (1979), 4 W.C.B. 142, cited in Robertson, *supra*, note 1 at 189.
- <sup>14</sup> See also on this point *Re F.P. Publications (Western) Ltd.* (1979), 51 C.C.C. (2d) 110 (Man. C.A.); and *Re Vaudrin and the Queen* (1982), 2 C.C.C. (3d) 214 (B.C.S.C.).
- <sup>15</sup> (1978), 43 C.C.C. (2d) 197 (Ont. H.C.J.), *reversed on other grounds* 4 C.R. (3d) 121 (Ont. C.A.).
- <sup>16</sup> See generally Mewett, *Public Criminal Trials* (1978-79), 21 Cr. L.Q. 199. For a case which elaborates the procedural requirements of a Crown application under s. 442(3), see *R. v. Calabrese and Renard* (No. 3) (1981), 64 C.C.C. (2d) 71 (Que. S.C.).



## Chapter 23

# The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* was proclaimed in force on April 17, 1982. As a central component of the *Constitution Act, 1982*, the *Charter* is part of the supreme law of Canada: any federal, provincial, territorial or municipal law that is inconsistent with its provisions is, to the extent of the inconsistency, of no force or effect.<sup>1</sup> By virtue of its entrenched status in Canadian constitutional law, the *Charter* imposes a new set of limitations on the powers of Parliament and the provincial legislatures and overrides any statute that is inconsistent with its provisions.<sup>2</sup>

Among the legal rights and fundamental freedoms accorded constitutional protection in the *Charter* are:

- The right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;
- The right to be secure against unreasonable search or seizure;
- The right not to be arbitrarily detained or imprisoned;
- The right of any person charged with an offence to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- The right not to be subjected to any cruel and unusual treatment or punishment;
- Freedom of conscience and religion;
- Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- Freedom of association.

Section 15(1) of the *Charter* further provides that “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” This provision, however, does not come into effect until April 17, 1985.<sup>3</sup>

Anyone whose rights or freedoms, as guaranteed by the *Charter*, have been infringed or denied may apply to a court to obtain "such remedy as the court considers appropriate and just in the circumstances."<sup>4</sup> On the other hand, Parliament or a provincial legislature may expressly declare that a statute or provision thereof shall operate notwithstanding specified sections of the *Charter*<sup>5</sup>; such a declaration ceases to have effect five years after it comes into force, or on such earlier date as is specified in the declaration.<sup>6</sup>

While the *Charter* guarantees the enjoyment of certain basic rights and freedoms, and provides for legal remedies in the event of their infringement or denial, it also recognizes that individual rights and freedoms are not constitutional absolutes. Section 1 of the *Charter* states that:<sup>7</sup>

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it *subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society*.

Although the judicial interpretation of *Charter* provisions to date must be viewed somewhat tentatively,<sup>8</sup> Canadian courts have nonetheless provided a measure of guidance concerning the requirements of Section 1. Where a limit on a fundamental right or freedom contained in the *Charter* is shown, the burden rests with the party claiming the benefit of such limit to establish that it is a reasonable limit which can be demonstrably justified in a free and democratic society. The "reasonableness" and "demonstrable justification" of such limit may be established by adducing evidence, by explaining the terms and purposes of the limiting law and its economic, social and political background, and by referring to comparable legislation in other acknowledged free and democratic societies.<sup>9</sup> A limit should be considered "reasonable" if it employs a means proportionate to the end at which the law is directed, and courts should not lightly substitute their opinion for that of the representative law-making body.<sup>10</sup> The limit must, however, have legal force in order to withstand constitutional challenge: a limitation which is imposed solely by administrative discretion cannot be considered a limit "prescribed by law."<sup>11</sup>

In determining whether a statutory provision is constitutionally consistent with the fundamental standards set forth in the *Charter*, Canadian courts will have to address themselves to two questions. First, does the provision "infringe" or "deny" any of the rights and freedoms enumerated in the *Charter*? Second, if the answer to the first question is yes, can the infringement be considered reasonable and demonstrably justified in a free and democratic society?<sup>12</sup> This process of constitutional adjudication of individual rights can be better understood in the context of specific legal issues raised since the advent of the *Charter*. Legal challenges under the *Charter* have generated a number of issues relevant to the Committee's mandate, particularly in relation to: child welfare proceedings; *Criminal Code* sexual offences; the sentencing of offenders; publicity; and the legal regulation of obscene materials.

## Child Welfare Proceedings

- *Issue:* whether a provincial child welfare statute which provides that a child welfare authority may authorize medical treatment, including blood transfusions, for a neglected child, offends against the *Charter's* guarantee of freedom of conscience and religion.<sup>13</sup>
- *Issue:* whether the apprehension of a child apparently in need of protection, pursuant to authorization in a child welfare statute, constitutes a reasonable and justifiable limit on freedom of association.<sup>14</sup>
- *Issue:* whether the apprehension of a child pursuant to child welfare legislation constitutes a "detention" within the meaning of section 9 of the *Charter*, which provides that "everyone has the right not be arbitrarily detained or imprisoned."<sup>15</sup>
- *Issue:* whether the removal of a child from his or her parents pursuant to child welfare legislation constitutes "cruel and unusual treatment or punishment."<sup>16</sup>
- *Issue:* whether evidence of the environment in which a child is being raised should be excluded from a proceeding to determine whether the child is in need of protection, on the ground that it was improperly obtained and hence might serve to bring the administration of justice into disrepute.<sup>17</sup>

## Criminal Code Sexual Offences

- *Issue:* whether the offence in section 146(1) of the *Criminal Code*, which proscribes sexual intercourse with a female under 14, and which excludes mistake as to the age of the female as a defence, offends against the right not to be deprived of life, liberty or security of the person except in accordance with the principles of fundamental justice.<sup>18</sup>

## Sentencing of Offenders

- *Issue:* whether mandatory minimum sentences of imprisonment in penal statutes offend against the right not to be deprived of life, liberty or security of the person except in accordance with the principles of fundamental justice.<sup>19</sup>
- *Issue:* whether the preventive detention provisions relating to dangerous offenders in Part XXI of the *Criminal Code* contravene the right not to be arbitrarily detained or imprisoned.<sup>20</sup>
- *Issue:* whether the preventive detention provisions relating to dangerous offenders in Part XXI of the *Criminal Code* constitute "cruel and unusual treatment or punishment."<sup>21</sup>



## Publicity

- *Issue:* whether a provincial child welfare statute, which gives the court power to exclude any member of the public from a child welfare proceeding in specified circumstances, offends against the *Charter's* guarantee of freedom of the press.<sup>22</sup>
- *Issue:* whether section 12 of the *Juvenile Delinquents Act*, which requires that the trials of juveniles shall be held *in camera*, offends against the *Charter's* guarantee of freedom of the press.<sup>23</sup>
- *Issue:* whether the right of a person charged with an offence to a "public hearing," contained in section 11(d) of the *Charter*, applies to civil, child welfare proceedings instituted to determine whether a child is in need of protection.<sup>24</sup>
- *Issue:* whether section 442 of the *Criminal Code*, which provides for the exclusion of the public from criminal trials in specified circumstances, contravenes the right of a person charged with an offence to a "public hearing."<sup>25</sup>

## Legal Regulation of Obscene Materials

- *Issue:* whether the "obscenity" provisions in section 159 of the *Criminal Code* constitute reasonable limits on freedom of expression which can be demonstrably justified.<sup>26</sup>
- *Issue:* whether the prohibition in the federal *Customs Tariff* against the importation of books and other materials of an "immoral or indecent character" constitutes a reasonable limit on freedom of expression which can be demonstrably justified.<sup>27</sup>

## Summary

That the protection of individual rights and freedoms in the *Charter* does not imply the paralysis of law enforcement is apparent both from legal decisions rendered to date and from explicit statements by Canadian courts.<sup>28</sup> Even so, the *Charter* obliges courts to consider the reasonableness of and justifications for the limits placed by government on individual rights and freedoms enumerated in the *Charter*. As Mr. Justice Laforest of the New Brunswick Court of Appeal has observed, this new judicial role should profoundly affect the sources on which courts will rely for guidance.<sup>29</sup> It is in this respect that the Committee's findings and recommendations are most relevant to the issues posed by the *Charter*.

In the course of its work, the Committee has collected extensive information on the nature and occurrence of child sexual abuse and exploitation in Canada, and on the manner in which Canadian social and legal institutions respond to it. The Committee's findings highlight the operation of the Canadian legal system in relation to matters within the Committee's mandate,

and the practical and conceptual deficiencies in the law from the standpoint of child protection. On the basis of a close scrutiny of these findings, the Committee has recommended, for example, specific legal reforms to *Criminal Code* sexual offences and to the rules of evidence in proceedings relating to child sexual abuse.

In the view of the Committee, each of its legal recommendations is, in light of the research findings, necessary in order to provide young persons with optimal protection against sexual abuse and exploitation. The justifications for each reform are given in different parts of this Report. The end sought to be achieved in each case is the protection of young persons; the legislative means proposed to achieve it are proportionate to that end. In the Committee's judgment, these proposed reforms to the law constitute an appropriate and tailored response to the special needs and substantial vulnerabilities of Canadian children and youths.

## REFERENCES

### Chapter 23: The Canadian Charter of Rights and Freedoms

<sup>1</sup> *Constitution Act, 1982*, s. 52.

<sup>2</sup> See Hogg, *Supremacy of the Canadian Charter of Rights and Freedoms* (1983), 61 Can. Bar Rev. 69; and Laforest, *The Canadian Charter of Rights and Freedoms: An Overview* (1983), 61 Can. Bar Rev. 19.

<sup>3</sup> *Canadian Charter of Rights and Freedoms*, s. 32(2). Of course, the "equality before the law" clause in s. 1(b) of the *Canadian Bill of Rights* continues to operate: see Tarnopolsky, *The Equality Rights in the Canadian Charter of Rights and Freedoms* (1983), 61 Can. Bar Rev. 242.

<sup>4</sup> *Canadian Charter of Rights and Freedoms*, s. 24(1).

<sup>5</sup> *Canadian Charter of Rights and Freedoms*, s. 33(1).

<sup>6</sup> *Canadian Charter of Rights and Freedoms*, ss. 33(2)-33(5).

<sup>7</sup> Emphasis added.

<sup>8</sup> At the time of this writing, the Supreme Court of Canada had not yet decided any of the numerous appeals relating to the interpretation of the *Charter*.

<sup>9</sup> *Re Southam Inc. and The Queen (No. 1)* (1983), 3 C.C.C. (3d) 515 (Ont. C.A.).

<sup>10</sup> *Quebec Association of Protestant School Boards et al. v. Attorney General of Quebec et al. (No. 2)* (1982), 140 D.L.R. (3d) 33 (Que. Sup. Ct.), *aff'd* June 9, 1983 (Que. C.A.).

<sup>11</sup> *Re Ontario Film and Video Appreciation Society and Ontario Board of Censors* (March 25, 1983), 19 A.C.W.S. (2d) 62 (Ont. Div. Ct.).

<sup>12</sup> B. Hovius and R. Martin, *The Canadian Charter of Rights and Freedoms in the Supreme Court of Canada* (1983), 61 Can. Bar Rev. 354.

<sup>13</sup> *Re Davis*, August 15, 1982, Alta. Prov. Ct. (Fam. Div.).

<sup>14</sup> *Re S. et al and Minister of Social Services* (June 27, 1983), 21 A.C.W.S. (2d) 219 (Sask. Q.B.).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Re W. and Children's Aid Society of Regional Municipality of York* (November 5, 1982), 17 A.C.W.S. (2d) 147 (Ont. Prov. Ct.).

<sup>18</sup> *R. v. Stevens* (1983), 3 C.C.C. (3d) 198 (Ont. C.A.).

<sup>19</sup> *R. v. Newell (No. 4) et al.* (1982), 70 C.C.C. (2d) 10 (B.C.S.C.).

<sup>20</sup> *R. v. Simon (No. 3)* (1982), 69 C.C.C. (2d) 557 (N.W.T.S.C.); *Re Mitchell and The Queen* (July 7, 1983), 10 W.C.B. 235 (Ont. H.C.J.).

<sup>21</sup> *R. v. Simon (No. 3)*, *ibid.*

<sup>22</sup> *Re S.D.A.* (1982), 28 R.F.L. (2d) 121 (B.C. Prov. Ct.).

<sup>23</sup> *Re Southam Inc. and The Queen (No. 1)*, *supra*, note 9.

<sup>24</sup> *Re C. et al.* (June 23, 1983), 21 A.C.W.S. (2d) 311 (Alta. Prov. Ct.). See generally Beckton, *Freedom of Expression — Access to the Courts* (1983), 61 Can. Bar Rev. 101.

<sup>25</sup> *R. v. L'Espérance* (April 28, 1982), 8 W.C.B. 352 (Que. Ct. Sess.).

<sup>26</sup> *R. v. Red Hot Video Ltd.* (May 12, 1983), 10 W.C.B. 153 (B.C. Prov. Ct.).

<sup>27</sup> *Re Luscher and Deputy Minister, Revenue Canada Customs and Excise* (June 30, 1983), 20 A.C.W.S. (2d) 509 (B.C. Co. Ct.).

<sup>28</sup> See especially *R. v. Altseimer* (1982), 1 C.C.C. (3d) 7 (Ont. C.A.).



<sup>29</sup> Laforest, *supra*, note 2. On the use of opinion polls in constitutional adjudication, see Gibson, *Determining Disrepute: Opinion Polls and the Canadian Charter of Rights and Freedoms* (1983), 61 Can. Bar Rev. 377.



## Part IV

# Police Services





## Chapter 24

# Police Investigation

The 'general occurrence form' was the primary source of information for the findings obtained in the National Police Force Survey in which 28 police forces from all parts of Canada participated. The summary of the police investigation of cases of alleged child sexual abuse given in Chapter 7, *Dimensions of Sexual Assault*, is expanded in this Part of the Report. In this chapter, information is given concerning the time taken by complainants in reporting offences to the police, whether the police regarded these complaints as being 'founded' or 'unfounded', the laying of criminal charges and the reasons why charges were not laid. In Chapter 25, *Elements of the Offences*, information is given concerning the acts committed in relation to their classification as sexual offences specified in the *Criminal Code*.

The 'general occurrence form' is an internal report which records the narrative of events given by the victim, complainant (in police terminology, the "complainant" is the person who notifies the police), or witness to the first officer on the scene. It is largely from the information on these forms that police forces compile statistical information on overall crime rates. Because of the different practices among Canadian police forces, the completeness of the information recorded in the general occurrence form varies from city to city. In larger police forces, the first officer on the scene is usually involved only with the writing of the occurrence. This officer will then submit the form to a sergeant, who in turn will forward it to a specialized investigative unit for consideration. Should a follow-up be required, the investigators will re-interview the relevant parties. It is at this stage that the more technical legal and evidentiary questions are considered and a follow-up report submitted.

In the majority of the police forces participating in the survey, it is not the responsibility of the first officer to carry out the entire investigation. If, however, the officer happens upon the suspect at this initial stage, the occurrence form will contain a complete account of the event and will note whether an arrest was made. In smaller police forces, where manpower is at a premium, the officer called to the scene will also typically become the investigating officer responsible for the case. Accordingly, the general occurrence form will contain all information required for a case preparation in the event charges are laid.

Due to the “contemporaneous” nature of the information recorded on police occurrence forms, the findings presented are limited in certain respects from a strictly legal point of view. For example, although the investigating officer may consider that the occurrence discloses the offence of “incest”, later discussions with the Crown attorney may indicate that a different criminal charge would be either more appropriate or more expedient in the circumstances. For evidentiary or other reasons, the charge against the accused may be withdrawn (which vacates the charge unless a new charge is subsequently laid) or the proceedings “stayed” (which suspends them until the Crown directs otherwise). The accused might agree to plead guilty to one charge in consideration of the withdrawal of other charges outstanding against him or her, which is one form of the practice known colloquially as “plea bargaining”. Alternatively, the charge or charges against the accused might be dropped on the condition that he or she undergo some form of therapy; this practice is known as “pre-trial diversion”. Where neither of the above occurs, the accused might nevertheless be acquitted at trial, and this legal result challenged on appeal. Since each of the 6203 cases was not followed up to its eventual conclusion, the findings do not provide information concerning these “longitudinal” aspects of law enforcement. (Information in this regard was collected by the Committee from other sources, particularly with respect to sentencing and corrections).

Accepting these limitations, however, the findings obtained are highly relevant to the social assumptions upon which the Canadian law of sexual offences against young persons has hitherto been based. Their strength lies in the extensive detail with which they describe the investigation of alleged child sexual abuse from a police perspective. The information presented constitutes a necessary empirical foundation from which the Committee derived a substantial proportion of its recommendations for law reform presented in Part III of the Report.

The information given in this chapter, unless otherwise specified, describes 4143 cases investigated by the police of alleged sexual assaults involving children and youths who were 20 years-old and younger. Findings concerning acts of exposure are considered separately in Chapter 8, *Acts of Exposure* and Chapter 9, *Exposure Followed by Assault*. The findings given in this chapter vary slightly from those given in Chapter 7, *Dimensions of Sexual Assault*. In the latter, the experience of children and youths age 15 and younger is considered while in this chapter, findings are presented for children and youths age 20 and younger.

## Reporting the Offence

As noted in Chapter 7, *Dimensions of Sexual Assault*, in comparison with victims who were known to other public services, those who sought police assistance did so more promptly. Most offences were reported to the police within 24 hours (65.3 per cent); more than three-quarters of the offences were reported to the police within one week of their occurrence (76.4 per cent). A



small portion of these offences, however, was not reported to the police until after a delay of more than six months (7.8 per cent). There is no significant variation in these time intervals based on the sex of the victim.

Interval Taken To Report Offence	Male Victims	Female Victims	Total
	Accum. %	Accum. %	Accum. %
Offence reported within 24 hours	60.2	66.4	65.3
Offence reported within 1 week	74.3	76.9	76.4
Offence reported within 6 months	95.2	91.5	92.2
Offence reported over 6 months after occurrence	100.0	100.0	100.0

There is no consistent trend between the time taken by female victims or by persons on their behalf to report the offence and the police decision to lay a criminal charge (Table 24.1). Of the 486 cases (15.9 per cent of the total) in which the offence was reported to the police more than a month after its occurrence, the proportion of charges laid is greater than that for cases in which the

**Table 24.1**  
**Interval Taken by *Female* Victims**  
**to Report Offence to the Police: Charges Laid**

Interval Taken to Report Offence by Victim	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	796	62.1	485	37.9	1,281	100.0
Within 4 hours	212	63.9	120	36.1	332	100.0
Within 8 hours	82	69.5	36	30.5	118	100.0
Within 12 hours	50	62.5	30	37.5	80	100.0
Within 16 hours	22	59.5	15	40.5	37	100.0
Within 24 hours	130	70.7	54	29.3	184	100.0
Within 1-3 days	114	62.0	70	38.0	184	100.0
Within 4-7 days	90	65.7	47	34.3	137	100.0
Under 1 month	135	60.8	87	39.2	222	100.0
Under 6 months	129	57.1	97	42.9	226	100.0
Under 12 months	38	50.7	37	49.3	75	100.0
Over 1 year	83	44.9	102	55.1	185	100.0
TOTAL	1,881	61.4	1,180	38.6	3,061	100.0

*National Police Force Survey.* Information missing for 310 cases.

police were notified more promptly. As in the case of female sexual victims, there is no consistent trend between the time taken by male victims or by persons on their behalf to report the offence and the police decision to lay a criminal charge. Of the 105 cases (15.8 per cent of the total) listed in Table 24.2 in which the offence was reported more than a month after its occurrence, the proportion of charges laid was greater than that for cases in which the police were notified more promptly.

**Table 24.2**  
**Interval Taken by *Male* Victims**  
**to Report Offences to the Police: Charges Laid**

Interval Taken to Report Offence by Victim	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	158	59.9	106	40.1	264	100.0
Within 4 hours	35	58.3	25	41.7	60	100.0
Within 8 hours	7	58.3	5	41.7	12	100.0
Within 12 hours	6	54.6	5	45.5	11	100.0
Within 16 hours	4	66.7	2	33.3	6	100.0
Within 24 hours	29	61.7	18	38.3	47	100.0
Within 1-3 days	30	55.6	24	44.4	54	100.0
Within 4-7 days	26	65.0	14	35.0	40	100.0
Under 1 month	37	56.1	29	43.9	66	100.0
Under 6 months	31	42.5	42	57.5	73	100.0
Under 12 months	3	18.8	13	81.2	16	100.0
Over 1 year	6	37.5	10	62.5	16	100.0
<b>TOTAL</b>	<b>372</b>	<b>55.9</b>	<b>293</b>	<b>44.1</b>	<b>665</b>	<b>100.0</b>

*National Police Force Survey.* Information missing for 107 cases.

When only those offences involving the specific sexual acts of vaginal and attempted vaginal intercourse with females, and anal and attempted anal intercourse with males and females are considered, the non-relationship between the time taken to report the offence and the police decision to lay a criminal charge is even more apparent. With respect to offences involving *vaginal or attempted vaginal intercourse with a female*, the time taken by the female victim or by someone on the victim's behalf to notify the police was not a critical factor in the police decision to lay a criminal charge (Tables 24.3 and 24.4).

**Table 24.3**

**Interval Taken by Female Victims to Report Offences  
Involving *Vaginal Intercourse* to the Police: Charges Laid**

Interval Taken to Report Acts of Vaginal Intercourse by Victims	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	90	48.9	94	51.1	184	100.0
Within 4 hours	45	60.8	29	39.2	74	100.0
Within 8 hours	28	73.7	10	26.3	38	100.0
Within 12 hours	19	90.5	2	9.5	21	100.0
Within 16 hours	1	25.0	3	75.0	4	100.0
Within 24 hours	22	62.9	13	37.1	35	100.0
Within 1-3 days	22	52.4	20	47.6	42	100.0
Within 4-7 days	17	60.7	11	39.3	28	100.0
Under 1 month	28	58.3	20	41.7	48	100.0
Under 6 months	36	63.2	21	36.8	57	100.0
Under 12 months	10	38.5	16	61.5	26	100.0
Over 1 year	27	37.5	45	62.5	72	100.0
<b>TOTAL</b>	<b>345</b>	<b>54.9</b>	<b>284</b>	<b>45.1</b>	<b>629</b>	<b>100.0</b>

*National Police Force Survey.* Information missing for 57 cases.

**Table 24.4**

**Interval Taken by Female Victims to Report Offences  
Involving *Attempted Vaginal Intercourse* to the Police: Charges Laid**

Interval Taken to Report Acts of Attempted Vaginal Intercourse by Victims	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	47	57.3	35	42.7	82	100.0
Within 4 hours	15	55.6	12	44.4	27	100.0
Within 8 hours	6	66.7	3	33.3	9	100.0
Within 12 hours	1	25.0	3	75.0	4	100.0
Within 16 hours	1	50.0	1	50.0	2	100.0
Within 24 hours	11	78.6	3	21.4	14	100.0
Within 1-3 days	4	30.8	9	69.2	13	100.0
Within 4-7 days	8	72.7	3	27.3	11	100.0
Under 1 month	13	68.4	6	31.6	19	100.0
Under 6 months	10	43.5	13	56.5	23	100.0
Under 12 months	3	75.0	1	25.0	4	100.0
Over 1 year	7	38.9	11	61.1	18	100.0
<b>TOTAL</b>	<b>126</b>	<b>55.8</b>	<b>100</b>	<b>44.2</b>	<b>226</b>	<b>100.0</b>

*National Police Force Survey.* Information missing for 24 cases.



Tables 24.5, 24.6, 24.7 and 24.8 pertain to offences involving *acts of anal or attempted anal intercourse with female and male victims*, respectively. In each instance, it is evident that the police decision to charge is largely independent of the time taken to report. For offences involving acts of anal intercourse with females, charges were laid in 23 out of a total of 32 cases (71.9 per cent). For offences involving acts of attempted anal intercourse with females, charges were laid in 24 out of a total of 41 cases (58.5 per cent). For

**Table 24.5**  
**Time Taken by Female Victims or by Persons on their Behalf**  
**to Report Offences Involving *Anal Intercourse***

Interval Taken to Report Acts of Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=9)	Accum. Per Cent	Number (n=23)	Accum. Per Cent
Offences reported within 24 hours	8	88.9	13	56.5
Offences reported within 1 week	1	100.0	3	69.6
Offences reported within 6 months	—	—	3	82.6
Offences reported over 6 months after occurrence	—	—	4	100.0

*National Police Force Survey.*

**Table 24.6**  
**Time Taken by Female Victims or by Persons on their Behalf**  
**to Report Offences Involving *Attempted Anal Intercourse***

Interval Taken to Report Acts of Attempted Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=17)	Accum. Per Cent	Number (n=24)	Accum. Per Cent
Offences reported within 24 hours	12	70.6	16	66.7
Offences reported within 1 week	1	76.5	2	75.0
Offences reported within 6 months	2	88.2	3	87.5
Offences reported over 6 months after occurrence	2	100.0	3	100.0

*National Police Force Survey.*

offences involving acts of anal intercourse with males, charges were laid in 35 out of a total of 55 cases (63.6 per cent). Although the number of cases in this category is small, it should be noted that the proportion of suspects charged with an offence involving anal intercourse with a young male (63.6 per cent) is considerably higher than that for all offences against young male victims (44.2 per cent). For offences involving acts of attempted anal intercourse with males, charges were laid in 16 out of a total of 39 cases (41.0 per cent).

Table 24.7

Time Taken by Male Victims or by Persons on their Behalf  
to Report Offences Involving *Anal Intercourse*

Interval Taken to Report Acts of Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=20)	Accum. Per Cent	Number (n=35)	Accum. Per Cent
Offences reported within 24 hours	8	40.0	14	40.0
Offences reported within 1 week	4	60.0	7	60.0
Offences reported within 6 months	8	100.0	12	94.3
Offences reported over 6 months after occurrence	—	—	2	100.0

National Police Force Survey.

Table 24.8

Time Taken by Male Victims or by Persons on their Behalf  
to Report Offences Involving *Attempted Anal Intercourse*

Interval Taken to Report Acts of Attempted Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=23)	Accum. Per Cent	Number (n=16)	Accum. Per Cent
Offences reported within 24 hours	16	69.6	7	43.8
Offences reported within 1 week	4	87.0	3	62.5
Offences reported within 6 months	3	100.0	3	81.3
Offences reported over 6 months after occurrence	—	—	3	100.0

National Police Force Survey.

The findings indicate that the time taken by a young victim of an alleged sexual abuse or by someone on the victim's behalf to report the offence to the police is not a critical factor in the police decision to lay a criminal charge. One can also infer that, at least from the police perspective, the likelihood that a young victim is making a true allegation is not a function of the promptness with which the incident is reported to the police. The findings strongly support the view that no particular inferences concerning the victim's credibility should be drawn merely because the victim did not complain "at the first reasonable opportunity".

**In view of the significant proportion of cases in which criminal charges were laid, notwithstanding that a month or more had elapsed since the date of the offence, it is evident that the police are mindful of the considerations which may prevent prompt reporting of these incidents. These findings support the Committee's recommendation given in Part III of the Report that the evidentiary rules concerning the doctrine of "recent complaint" in prosecutions for sexual offences be abrogated by statute.**

## Identity of Persons Contacting the Police

Due to the youth of some sexual victims, and for a variety of other reasons, the police will often be notified of the offence by someone other than the victim. The identity of the persons who reported these sexual offences against young persons to the police is presented in Tables 24.9 and 24.10. A caveat needs to be entered concerning these findings. In police terminology, the "complainant" is the person who reports an alleged offence to the police, and this will often be a person other than the victim of the offence. Some Canadian police forces, however, appear to have adopted the practice of designating on the police occurrence form the victim as the complainant in all cases, even though the body of the police report clearly indicates that someone other than the victim actually notified the police. Where this occurred, the person who notified the police was specified as the complainant for the purposes of the Committee's research.

In a large number of cases, the victim was listed as the complainant on the police occurrence form but the investigating officer gave no indication concerning who actually called the police. Although each general occurrence form used by the police forces of each city in the Committee's survey contained the category "complainant", there often was uncertainty in this regard in relation to the information provided by the investigating police officer. The implication of this reporting practice, to the extent that it occurs, is that the number of victims designated as "complainants" in the police sense, and the corresponding percentage of victims listed as "complainants" in the police sense, are inflated figures. This is particularly so in relation to reported offences against younger children.



**Table 24.9**  
**Identity of Persons Contacting the Police in Relation to Sexual Offences**  
**against *Female* Children and Youths: By Age of Victims**

Age of Female Victims	Persons Contacting the Police									
	Victim		Parent		Medical/Health Worker		Child Protection Service		Other Persons	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	67	14.2	317	67.3	9	1.9	26	5.5	52	11.0
7 – 11 years	165	22.8	389	53.9	6	0.8	38	5.3	124	17.2
12 – 13 years	193	40.7	163	34.4	2	0.4	26	5.5	90	19.0
14 – 15 years	421	56.8	152	20.5	2	0.3	47	6.3	119	16.1
16 – 17 years	275	67.6	54	13.3	5	1.2	11	2.7	62	15.2
18 – 20 years	389	81.2	15	3.1	1	0.2	4	0.8	70	14.6
<b>TOTAL</b>	<b>1,510</b>	<b>45.8</b>	<b>1,090</b>	<b>33.1</b>	<b>25</b>	<b>0.8</b>	<b>152</b>	<b>4.6</b>	<b>517</b>	<b>15.7</b>
									<b>3,294</b>	<b>100.0</b>

*National Police Force Survey. Information missing for 77 cases.*

\*rounding error

Table 24.10  
Identity of Persons Contacting the Police in Relation to Sexual Offences  
against *Male* Children and Youths: By Age of Victims

Age of Male Victims	Persons Contacting the Police									
	Victim		Parent		Medical/Health Worker		Child Protection Service		Other Persons	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	26	12.8	157	77.3	1	0.5	8	3.9	11	5.4
7 – 11 years	77	28.5	142	52.6	—	—	11	4.1	40	14.8
12 – 13 years	30	30.3	42	42.4	—	—	5	5.1	22	22.2
14 – 15 years	70	60.3	27	23.3	—	—	4	3.5	15	12.9
16 – 17 years	21	80.8	1	3.9	—	—	—	—	4	15.3
18 – 20 years	20	76.9	1	3.9	—	—	1	3.9	4	15.3
TOTAL	244	33.0	370	50.0	1	0.1	29	3.9	96	13.0
									740	100.0

National Police Force Survey. Information missing for 32 cases.

\*rounding error

Overall, about four in five sexual offences against young females were reported to the police either by the victim herself (45.8 per cent) or by her parents (33.1 per cent). Child protection services accounted for about one in 22 police referrals (4.6 per cent), while referrals from medical or health workers constituted about one in 132 (0.8 per cent). Other persons accounted for 15.7 per cent of referrals to the police.

Predictably, the likelihood that female victims themselves reported the offence to the police increased progressively with older victims. On the other hand, these offences came to the knowledge of the police through the agency of the victim's parents more often where the victim was a young child. That police referrals by child protection services decreased markedly with female victims 16 and older is noteworthy. This is partly a function of the legal mandate of these services, which does not extend to young persons over a certain age; in Ontario, for example, this age is 16.

As with female victims, about four in five sexual offences against young males were reported to the police either by the victim himself or by the victim's parents (83.0 per cent). Even so, a smaller proportion of male victims than female victims themselves reported the offence (33.0 versus 45.8 per cent), and, correspondingly, a larger proportion of male victims' parents than female victims' parents brought the offence to police attention (50.0 versus 33.1 per cent). Child protection services accounted for about one in 25 police referrals (3.9 per cent), while referrals from medical or health workers constituted only one in 1,000 (0.1 per cent). Other persons accounted for 13.0 per cent of referrals to the police. The age trends in reporting with respect to male victims are comparable to those observed for female victims. The likelihood that male victims themselves reported the offence to the police increased with older victims; correspondingly, the parents of male victims accounted for progressively fewer police referrals concerning older victims.

**At least with respect to pre-adolescent victims, it is evident on the basis of these findings that sexual offences against them were brought to police attention predominantly by persons other than the victims themselves. These children either made statements to someone concerning the offence or acted in a manner that aroused someone's suspicions, both of which resulted in the police being notified.**

**Under the current rules of evidence, however, many of these statements by child sexual victims would constitute hearsay and would be inadmissible in court. Moreover, under current legal doctrine, a large proportion of these young sexual victims would likely be deemed incompetent to testify, notwithstanding that their "allegations" are considered to be legitimate by the police. These findings strongly underscore the need for reform of the legal rules concerning the testimonial competency of children and the admissibility of hearsay statements along the lines recommended by the Committee in Part III of the Report.**



# “Founded” Occurrences

An occurrence investigated by the police is considered to be *founded* if the investigation indicates that the offence did occur, and *unfounded* if the investigation indicates that the offence did not occur. The founded-unfounded distinction is an internal police evaluation based on the results of its investigation. Whether or not charges are laid, however, depends on considerations relating

**Table 24.11**  
**Reports of Sexual Offences against *Female* Victims**  
**Listed by the Police as Founded Occurrences: By Age of Victim**

Age of Female Victims	Offences Listed as Founded Occurrences					
	Unfounded		Founded		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	26	5.5	443	94.5	469	100.0
7 – 11 years	28	3.9	689	96.1	717	100.0
12 – 13 years	33	7.0	439	93.0	472	100.0
14 – 15 years	66	9.0	670	91.0	736	100.0
16 – 17 years	66	16.3	339	83.7	405	100.0
18 – 20 years	55	11.5	423	88.5	478	100.0
TOTAL	274	8.4	3,003	91.6	3,277	100.0

National Police Force Survey. Information missing for 94 cases.

**Table 24.12**  
**Reports of Sexual Offences against *Male* Victims**  
**Listed by the Police as Founded Occurrences: By Age of Victims**

Age of Male Victims	Offences Listed as Founded Occurrences					
	Unfounded		Founded		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	15	7.4	187	92.6	202	100.0
7 – 11 years	9	3.4	258	96.6	267	100.0
12 – 13 years	5	5.1	94	94.9	99	100.0
14 – 15 years	3	2.6	113	97.4	116	100.0
16 – 17 years	3	11.1	24	88.9	27	100.0
18 – 20 years	1	3.8	25	96.2	26	100.0
TOTAL	36	4.9	701	95.1	737	100.0

National Police Force Survey. Information missing for 35 cases.

to the likelihood of securing a conviction in court. For example, the police may consider that an occurrence involving a sexual offence against a child was “founded” in the sense that they believed the event happened, but they may not lay charges because: the suspect cannot be found; the child victim (and principal Crown witness) will likely be deemed incompetent to testify at trial; there is no corroboration; the victim is unwilling to testify to the event; the victim’s parents are unwilling to subject their child to the trauma of the trial process; or for other reasons. The reasons why charges were not laid by the police are considered following the review of founded and unfounded occurrences.

For both sexes and for victims of sexual assaults of all ages up to 20, 92.3 per cent of all occurrences were considered to be “founded” by the police. Conversely, only 7.7 per cent, or about one in every 13 occurrences, were listed as “unfounded”.

Sex of Victim	Percentage of Occurrences Unfounded	Percentage of Occurrences Founded
Females	8.4	91.6
Males	4.9	95.1

With respect to female victims, there is a slight but statistically insignificant trend with age; the proportion of founded occurrences bottoms out in the 16-17 year category, and then rises again. Even so, the critical finding is that well over nine in 10 reported occurrences involving young female victims were considered to be “founded”. With respect to male victims, there is no significant variation in the proportion of founded occurrences depending on the ages of victims.

**These findings are significant in light of the traditional legal assumptions about the testimonial trustworthiness of young sexual victims. As noted, 92.3 per cent of all occurrences were considered to be “founded” by the police, and the trends with age were statistically insignificant. The findings with respect to children under age 14 are especially salient; the proportion of “founded” occurrences is in the 95 per cent range for victims of both sexes. It is evident that the police not only believed that the vast majority of reported incidents had actually occurred, but also that their assessments in this regard were largely independent of the age of the young sexual victim. Further, the alleged danger of false allegations being made by persons on behalf of very young children is not borne out. The findings provide strong support for the reforms to children’s evidence and hearsay recommended by the Committee in Part III of this Report.**

### Charges Laid

That an occurrence is considered “founded” does not necessarily mean that criminal charges will be laid. For victims of both sexes and of all ages in the survey, charges were laid in about two in five incidents (40.3 per cent).

**Table 24.13**

**Charges Laid by the Police against Suspects in Relation to Sexual Offences  
Committed against *Female* Victims: By Age of Victims**

Age of Female Victims	Charges Laid Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	294	63.9	166	36.1	460	100.0
7 – 11 years	410	57.6	302	42.4	712	100.0
12 – 13 years	257	54.7	213	45.3	470	100.0
14 – 15 years	443	60.5	289	39.5	732	100.0
16 – 17 years	260	64.4	144	35.6	404	100.0
18 – 20 years	318	67.2	155	32.8	473	100.0
<b>TOTAL</b>	<b>1,982</b>	<b>61.0</b>	<b>1,269</b>	<b>39.0</b>	<b>3,251</b>	<b>100.0</b>

*National Police Force Survey.* Information missing for 120 cases.

**Table 24.14**

**Charges Laid by the Police against Suspects in Relation to Sexual Offences  
Committed against *Male* Victims: By Age of Victims**

Age of Male Victims	Charges Laid Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	143	71.5	57	28.5	200	100.0
7 – 11 years	134	51.0	129	49.0	263	100.0
12 – 13 years	47	48.4	50	51.6	97	100.0
14 – 15 years	39	34.5	74	65.5	113	100.0
16 – 17 years	13	52.0	12	48.0	25	100.0
18 – 20 years	17	65.4	9	34.6	26	100.0
<b>TOTAL</b>	<b>393</b>	<b>54.3</b>	<b>331</b>	<b>45.7</b>	<b>724</b>	<b>100.0</b>

*National Police Force Survey.* Information missing for 48 cases.

Whether charges were laid against a suspect did not vary appreciably with the sex of the victim. The proportion of charges laid peaks in the 12-13 age group for girls (45.3 per cent) and in the 14-15 age group for boys (65.5 per cent).



Sex of Victim	Percentage of Charges Not Laid	Percentage of Charges Laid
Females	61.0	39.0
Males	54.3	45.7
Average	59.7	40.3

What is striking about these findings is that the proportion of charges laid in occurrences relating to both male and female victims under 16 is greater than that for victims in the 16-20 category. The police were no more reluctant to act on the allegations of young children than they were on the allegations of older teenagers; if anything, the reverse is true. To the extent that the police decision to charge is contingent on the assessment that the victim's allegation is true, these findings belie the notion that the credibility of child sexual victims is appreciably less than that of older sexual victims. These findings furnish support for the reforms to the evidentiary rules concerning young children and hearsay recommended in Part III of this Report.

### Reasons Why Charges Were Not Laid

The findings given in Tables 24.15 and 24.16 list the principal reasons why criminal charges were not laid, broken down by the sex and age of the victim. In many instances, no charge was laid for a variety of reasons; each reason was noted in collecting this information from police records. Consequently, the number of "reasons charges not laid" greatly exceeds the total number of cases in which charges were not laid. Further, it was impossible to determine from the police records the relative weight that each of several reasons given may have contributed to the decision not to charge. Although each contributing factor was noted, no inferences were made concerning the relative importance of that factor in the police's decision not to lay a charge. Some factors, of course, would naturally be of controlling importance, for example, where the identity of the suspect was unknown.

The findings with respect to male and female victims, considered together, indicate that:

- In about one in three cases (males, 30.8 per cent; females, 33.8 per cent), charges were not laid because the identity of the suspect was unknown.
- In about one in five cases (males, 21.4 per cent; females, 17.3 per cent), there was no physical evidence (for example, no presence of semen after an alleged rape) was a contributing factor in no charge being laid.
- In about one in five cases (males, 26.2 per cent; females, 17.7 per cent), there was no corroboration of the victim's story (for example, a complete denial by the suspect coupled by a lack of other witnesses) was a contributing factor in no charge being laid.
- In about one in six cases (males, 18.8 per cent; females, 13.7 per cent), the intervention of a social service agency (and, in some cases, the institution of child protection proceedings) was a contributing factor in no criminal charge being laid.

## Reasons that Charges Were Not Laid by Age of Female Victims

Reasons Charges Not Laid	Age of Female Victims												TOTAL (n=1982)	
	Under Age 7 (n=294)		7-11 (n=410)		12-13 (n=257)		14-15 (n=443)		16-17 (n=260)		18-20 (n=318)			
	Non Accumulative Per Cent													
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%		
Identity of suspect unknown	65	22.1	132	32.2	71	27.6	135	30.5	129	49.6	138	43.4	670	33.8
Age of child	112	38.1	52	12.7	11	4.3	4	0.9	4	1.5	2	0.6	185	9.3
Lack of physical evidence	79	26.9	80	19.5	45	17.5	82	18.5	40	15.4	17	5.3	343	17.3
Lack of corroboration	93	31.6	79	19.3	43	16.7	86	19.4	34	13.1	16	5.0	351	17.7
Credibility of victim-questioned	13	4.4	35	8.5	45	17.5	86	19.4	69	26.5	44	13.8	292	14.7
Credibility of witness questioned	3	1.0	6	1.5	5	1.9	11	2.5	4	1.5	1	0.3	30	1.5
Victim unwilling to testify	8	2.7	18	4.4	34	13.2	86	19.4	55	21.2	49	15.4	250	12.6
Witness unwilling to testify	3	1.0	1	0.2	3	1.2	3	0.7	2	0.8	3	0.9	15	0.8
Offender's spouse unwilling to testify	1	0.3	3	0.7	7	2.7	8	1.8	1	0.4	1	0.3	21	1.1
Parents unwilling to lay charges	11	3.7	11	2.7	14	5.4	16	3.6	2	0.8	1	0.3	55	2.7
Details of offence vague	24	8.2	39	9.5	30	11.7	60	13.5	48	18.5	20	6.3	221	11.2
Social service agency intervention	63	21.4	64	15.6	42	16.3	70	15.8	22	8.5	11	3.5	272	13.7
Suspect cautioned by police	94	32.0	119	29.0	78	30.4	93	21.0	23	8.8	10	3.1	417	21.0





- In one in four cases concerning male victims (25.4 per cent) and in more than one in five cases concerning female victims (21.0 per cent), the suspect was cautioned but not charged.

## Identity of Suspect Unknown

The proportion of cases in which the identity of the offender was unknown increases with the victims' ages. This trend is particularly apparent with respect to female victims. The findings suggest that young children were more apt either to know the identity of their assailants or to disclose this information than were older children and teenagers.

## Age of Child

The results here are predictable. Children under the age of seven, generally speaking, would likely be held incompetent to give even unsworn testimony at trial. It is therefore not surprising that the "age of child" constituted the main reason cited in police decisions not to charge in cases where the victim was under seven years of age, irrespective of the sex of the victim. In the absence of a confession by the offender or other strong confirmatory evidence, prosecutions of offenders who sexually assault very young children are often pointless. The findings indicate that the police are aware of these practical realities and, instead of charging suspected offenders, use the expedient of a caution proportionately more often in cases in which the victim is very young.

The importance of the child's age as a factor influencing the decision not to charge drops off sharply for victims who are 12 years-old and older. Children of these ages would normally be held competent to testify under current legal doctrine.

## Lack of Corroboration

These findings are significant especially with respect to male and female victims 14-20 years of age. It would appear that, at least in some instances, the police did not charge for reasons of "lack of corroboration", even where the suspect could have been charged with an offence for which corroboration was not required by law, for example, rape and indecent assault on a female. The offence-specific findings concerning "lack of corroboration" are presented later in this chapter.

## Credibility of Victim Questioned

These findings are striking when viewed in relation to the ages of victims. At least as far as the police are concerned, the credibility of young sexual victims decreased with age, irrespective of the sex of the victim. It strongly

appears that sexual victims of both sexes under the age of 12 were considered more credible than older sexual victims, and that victims 16-20 were perceived to be the least credible.

**These findings refute the assumption that the allegations of young sexual victims are intrinsically less trustworthy than those of older victims, and argue against the need for special corroboration requirements where young children are concerned. The findings also provide empirical support for the reforms to children's evidence and hearsay recommended in Part III of this Report.**

## Credibility of Witness Questioned

This reason came up too seldom to indicate a trend. The Committee's findings indicate that only rarely in cases investigated by the police was there a witness to a sexual assault on a young person.

## Victim Unwilling to Testify

This factor becomes progressively more important with older victims. That this reason appears only rarely with respect to young children is not surprising; where the police feel that a child victim will be incompetent to testify, the child's willingness to testify is somewhat academic. The significance of this factor in relation to older victims can perhaps be attributed in part to the victims' reluctance to submit to the criminal trial process.

## Parents Unwilling to Lay Charges

This occurred rarely, and was only a factor where the victim was a child or young teenager.

## Details of Offences Vague

This reason was a contributing factor in about one in 10 cases and increased in importance with the age of the victims, peaking in the 16-17 year group for both sexes. **That this was a relatively minor factor in cases involving children under 12 is yet another refutation of the assumption that young children are incapable of speaking effectively on their own behalf.** On the other hand, the relative prominence of this factor with respect to older teenagers may be accounted for in part by a reluctance to recount the details of the offence or to identify an offender known to them.

## Social Service Agency Intervention

The intervention of a social service agency was a factor in the police not laying criminal charges mainly with respect to children under 16. Many child

care professionals feel that the institution of “parallel” legal proceedings against an offender (namely, both in criminal court and in child welfare court) is counter-productive, unless the laying of a criminal charge will serve a pragmatic purpose, for example, ensuring that an incestuous father stays away from his daughters.

## Suspect Cautioned by Police

The use of informal “cautions” against suspected offenders happened most often where the victim was under 14, and particularly, where the victim was under seven years of age. As noted, in the absence of a confession by the offender or other strong confirmatory evidence, prosecutions of offenders who sexually assault very young children are often futile. It would appear that the police are aware of these practical realities, and caution suspected offenders proportionately more often where the child is very young. On the other hand, the use of cautions in cases of older victims may in part be attributable to discretionary decisions by police officers that a criminal charge would not be appropriate in the circumstances (for example, consensual sex between two 19 year-old males).

## Reasons Charges Were Not Laid by Types of Offences

The principal reasons why charges were not laid enables certain inferences to be drawn concerning how police charging practices are influenced by different reasons and in relation to the ages and sexes of the victims. Additional insights can be gained by considering these “reasons not to charge” in light of the different categories of sexual offences which the police are called upon to investigate. As noted, that a police occurrence form specifies, for example, “rape” as the most appropriate charge in the circumstances does not mean that the suspect could be successfully convicted of rape at trial. Even so, to the extent that the type of offence indicated on the police occurrence form requires certain key elements to be proven, the following findings are useful in considering how the police decision not to lay a charge may be influenced by the nature of the offence being investigated.

In Table 24.17, the number of “reasons charges not laid” exceeds the total number of cases in which charges were not laid. The percentages reported are based on the total number of instances a given reason was reported with respect to a specified offence, relative to the total number of cases involving that reported offence in which charges were not laid. Since more than one reason was often cited in investigations relating to a particular offence the total percentages under each offence exceed 100.0 per cent. A case in which no charges were laid is hereinafter called an “uncharged case”.



Reasons Charges Not Laid	Rape (n=219)	Attempted Rape (n=53)	Female Under Age 14 (n=34)	Female Age 14 But Under 16 (n=54)	Indecent Assault Female (n=1464)	Indecent Assault Male (n=360)	Gross Indecency (n=83)	Buggery (n=16)	Incest (n=45)	Sex. Int. Step- Daughter Etc. (n=2)	Sexual Int. With Feeble- Minded (n=3)	Contribu- ting to/ J.D.A. (n=18)	Average For 12 Offences (n=2,351)
Non Accumulative Per Cent													
Identity of suspect unknown	31.1	62.3	8.8	3.7	37.7	31.4	37.3	18.8	—	—	66.7	11.1	34.4
Age of child	0.9	1.9	11.8	1.9	4.8	6.7	15.7	—	4.4	—	—	—	10.9
Lack of physical evi- dence	27.9	9.4	29.4	13.0	16.5	21.7	24.1	25.0	35.6	—	33.3	16.7	19.0
Lack of corroborra- tion	21.0	18.9	32.4	7.4	17.4	25.8	30.1	25.0	37.8	100.0	33.3	5.6	19.9
Credibility of victim questioned	47.0	17.0	17.6	14.8	10.7	10.8	10.8	31.3	20.0	—	33.3	11.1	14.8
Credibility of witness questioned	1.8	1.9	5.9	1.9	1.5	1.4	6.0	6.3	4.4	—	—	—	1.8
Victim unwilling to testify	28.3	9.4	29.4	44.4	9.2	5.8	6.0	—	33.3	—	—	11.1	11.9
Witness unwilling to testify	0.9	—	2.9	—	0.6	0.8	2.4	—	2.2	—	—	—	0.8
Spouse unwilling to testify	—	—	—	—	1.2	0.6	3.6	—	6.7	—	—	—	1.1
Parents unwilling to lay charges	1.8	—	8.8	5.6	2.7	2.2	7.2	6.3	4.4	—	—	5.6	2.9
Details of offence vague	27.9	13.2	17.6	5.6	9.2	7.5	9.6	18.8	24.4	—	33.3	5.6	11.2
Complainants par- ents indifferent to laying charges	4.6	3.8	2.9	13.0	5.7	6.7	6.0	6.3	—	—	—	5.6	5.7
Social service agency intervention	5.5	3.8	5.9	7.4	14.1	18.9	19.3	18.8	60.0	100.0	66.7	16.7	14.8
Suspect cautioned by police	3.7	—	38.2	35.2	25.1	25.8	15.7	43.8	15.5	—	—	22.2	22.6

National Police Force Survey. Information missing for 24 cases.

## Identity of Suspect Unknown

The highest proportion of uncharged cases in which it was reported that the suspect's identity was unknown concerned the offence of attempted rape (62.3 per cent); this reason was reported in about one in three uncharged cases of rape, indecent assault on a female, indecent assault on a male and gross indecency. These five offences accounted for 98.6 per cent of the uncharged cases in which it was reported that the suspect's identity was unknown. That this reason was progressively more prominent with respect to older victims is illustrated in Table 24.18.

**Table 24.18**  
**Reasons that Police Charges Were Not Laid**  
**by Age of Complainant: *Suspect Unknown***

Age of Complainant	Type of Offence				
	Rape (n=68)	Attempted Rape (n=33)	Indecent Assault Female (n=552)	Indecent Assault Male (n=113)	Gross Indecency (n=31)
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	—	—	22.5	19.7	26.1
7 – 11 years	33.3	50.0	32.7	41.4	40.7
12 – 13 years	33.3	60.0	38.9	26.2	14.3
14 – 15 years	29.9	55.6	36.4	38.2	57.1
16 – 17 years	35.4	60.0	56.2	41.7	57.1
18 – 20 years	27.7	83.3	74.5	41.7	80.0
TOTAL	31.1	62.3	37.7	31.4	37.3

*National Police Force Survey.* Non-accumulative totals based on the proportion of cases in which the suspect was unknown to the number of charges not laid for each offence and by age group. The five offences listed account for 98.6 per cent of the cases in which charges were not laid because the identity of the suspect was unknown.

This tendency is remarkable, especially in relation to the offences of indecent assault on a female and indecent assault on a male. The identity of the suspect was reported to have been unknown in only about one in five of the uncharged cases of indecent assault female (22.5 per cent) and indecent assault male (19.7 per cent) concerning victims under seven years of age. The importance of this factor increased progressively with older victims: the identity of the suspect was reported to have been unknown in three in four of the uncharged cases of indecent assault female (74.5 per cent) and in more than two in five of the uncharged cases of indecent assault male (41.7 per cent) concerning victims in the 18-20 age group. These findings strongly suggest that older children and teenagers are less apt either to know the suspect's identity or to disclose the suspect's identity, than are younger children.

Age of Child

The offences of indecent assault on a female, indecent assault on a male, and gross indecency accounted for 96.1 per cent of the uncharged cases where the age of the child was given as a reason why charges were not laid. For reasons discussed earlier, the findings given in Table 24.19 indicate that this factor was, predictably, more important in cases involving victims under the age of 12.

Table 24.19  
Reasons that Police Charges Were Not Laid  
by Age of Complainant: *Age of Child*

Age of Complainant	Type of Offence		
	Indecent Assault Female (n=171)	Indecent Assault Male (n=62)	Gross Indecency (n=13)
	Non Accumulative Per Cent		
Under age 7	38.4	37.9	30.4
7 – 11 years	12.9	7.8	22.2
12 – 13 years	4.7	2.4	—
14 – 15 years	1.0	—	—
16 – 17 years	1.2	—	—
18 – 20 years	1.4	8.3	—
TOTAL	4.8	6.7	15.7

National Police Force Survey. Non-accumulative totals based on the proportion of reports citing the age of the child to the number of charges not laid for each offence and by age group. The three offences listed accounted for 96.1 per cent of cases where the age of the child was given as a reason why charges were not laid. The 10 other instances in which the age of the child was reported as a reason for not laying charges were: rape (2); attempted rape (1); sexual intercourse with a female under 14 (4); sexual intercourse with a female 14 or 15 (1); and incest (2).

Lack of Physical Evidence

The seven offences listed in Table 24.20 account for 97.1 per cent of the uncharged cases in which lack of physical evidence was cited as a reason why charges were not laid. In general, this reason becomes less prominent with older victims. This finding is not surprising in light of the fact that the law presumes older persons to be more trustworthy than young children and, correspondingly, the need for independent evidence is most compelling where the victim is a young child.



**Table 24.20**  
**Reasons that Police Charges Were Not Laid**  
**by Age of Complainant: Lack of Physical Evidence**

Age of Complainant	Type of Offence						
	Rape (n = 61)	Sexual Int. With Female Under 14 (n = 10)	Sexual Int. With Female 14 or 15 (n = 7)	Indecent Assault Female (n = 241)	Indecent Assault Male (n = 78)	Gross Indecency (n = 20)	Incest (n = 16)
	Non Accumulative Per Cent						
Under age 7	—	83.3	—	25.4	28.8	39.1	—
7 – 11 years	22.2	16.7	—	7.0	20.3	25.9	44.4
12 – 13 years	41.7	18.1	—	15.2	14.3	14.3	33.3
14 – 15 years	28.4	—	13.0	17.0	8.8	14.3	30.0
16 – 17 years	33.8	—	—	8.9	8.3	14.3	50.0
18 – 20 years	20.0	—	—	1.4	8.3	—	—
TOTAL	27.9	29.4	13.0	16.5	21.7	24.1	35.6

*National Police Force Survey.* Non-accumulative totals based on the proportion of reports of lack of physical evidence to the number of charges not laid and by age group. The seven offences listed accounted for 97.1 per cent of the cases in which lack of evidence was cited as a reason charges were not laid.

## Lack of Corroboration

The seven offences listed in Table 24.21 accounted for 97.4 per cent of the uncharged cases in which lack of corroboration was cited as a reason why charges were not laid. The prominence of this reason in cases where the victim was under age 14 can be explained by the fact that the evidence of an unsworn child is required by statute to be corroborated, and that even the evidence of a young child who is sworn as a witness is subject to the common law “corroboration warning rule”. Further, when these findings were collected, a mandatory corroboration requirement applied to the offence of incest. The findings indicate that the police were aware of these legal requirements, and tended to “screen out” cases which, due to lack of corroboration of the complainant’s story, would be pointless to bring to trial.

What is surprising, however, is the extent to which “lack of corroboration” was a factor in non-charging with respect to victims in the 14-20 age category. With the exception of incest, none of the offences listed in Table 24.21 required corroboration as a matter of law. These findings can be interpreted in at least three different ways. Either the police are uninformed about when corroboration is required as a strict matter of law, or they make assessments that, without some kind of confirmatory evidence the likelihood of securing a conviction in the particular circumstances is slender. Alternatively, the lack of corroboration may have been the decisive factor where the complainant’s credibility is otherwise doubted. Each of these considerations, or some combination of them and others, may have operated in any particular case.

## Complainant’s Credibility Questioned

That the complainant’s credibility was questioned in almost half (47.0 per cent) of the uncharged rape cases is the most significant of the findings given in Table 24.22. The findings suggest that in a significant proportion of cases the police seem to be sceptical about the veracity of all purported rape victims, whether children, young teenagers or older teenagers. Apart from the uncharged rape cases, the general trend is that the police are more doubtful of the veracity of older as opposed to younger sexual victims. This trend has been previously noted.

## Complainant Unwilling to Testify

This reason for not laying charges listed in Table 24.23 was most conspicuous in relation to the uncharged cases of rape, sexual intercourse with a female under 14, females 14 or 15, and incest. When viewed in relation to the victims’ ages, it becomes apparent that the prospect of testifying is a greater inhibiting factor where the victim is older. It is unknown why almost half (44.4 per cent) of the 24 uncharged cases of sexual intercourse with girls 14 or 15 cited the reason that the complainant was unwilling to testify. The section

**Table 24.21**  
**Reasons that Police Charges Were Not Laid**  
**by Age of Complainant: *Lack of Corroboration***

Age of Complainant	Type of Offence						
	Rape (n=46)	Attempted Rape (n=10)	Sexual Int. With Female Under Age 14 (n=11)	Indecent Assault Female (n=255)	Indecent Assault Male (n=93)	Gross Indecency (n=25)	Incest (n=17)
	Non Accumulative Per Cent						
Under age 7	—	25.0	66.7	30.4	29.5	26.1	100.0
7 – 11 years	11.1	—	16.7	18.5	21.9	29.6	55.6
12 – 13 years	16.7	20.0	27.2	15.6	28.6	35.7	33.3
14 – 15 years	29.9	33.3	—	17.3	23.5	28.6	25.0
16 – 17 years	20.0	13.3	—	8.9	25.0	42.9	50.0
18 – 20 years	15.4	16.7	—	2.1	25.0	20.0	—
<b>TOTAL</b>	<b>21.0</b>	<b>18.9</b>	<b>32.4</b>	<b>17.4</b>	<b>25.8</b>	<b>30.1</b>	<b>37.8</b>

*National Police Force Survey.* Non-accumulative totals based on the proportion of reports of lack of corroboration to the number of charges not laid and by age group. The seven offences listed accounted for 97.4 per cent of the cases in which lack of corroboration was cited as a reason charges were not laid.



Table 24.22

Reasons that Police Charges Were Not Laid  
by Age of Complainant: *Complainant's Credibility Questioned*

Age of Complainant	Type of Offence								
	Rape (n = 103)	Attempted Rape (n = 9)	Sexual Int. With Female Under 14 (n = 6)	Sexual Int. With Female 14 or 15 (n = 8)	Indecent Assault Female (n = 157)	Indecent Assault Male (n = 39)	Gross Indecency (n = 9)	Buggery (n = 5)	Incest (n = 9)
	Non Accumulative Per Cent								
Under age 7	—	—	16.7	—	4.3	9.1	—	—	—
7 – 11 years	44.4	—	—	—	7.8	7.8	3.7	—	22.2
12 – 13 years	50.0	40.0	29.4	—	14.2	14.3	28.6	—	33.3
14 – 15 years	40.3	11.1	—	14.8	15.6	17.6	28.6	75.0	15.0
16 – 17 years	53.8	33.3	—	—	16.6	16.7	14.3	100.0	25.0
18 – 20 years	47.7	5.6	—	—	8.5	25.0	20.0	100.0	—
TOTAL	47.0	17.0	17.6	14.8	10.7	10.8	10.8	31.3	20.0

*National Police Force Survey.* Non-accumulative totals based on the proportion of reports of the complainant's credibility being questioned to the number of charges not laid and by age group. The nine offences listed accounted for 99.1 per cent of the cases in which the complainant's credibility was cited as a reason why charges were not laid.

**Table 24.23**  
**Reasons that Police Charges Were Not Laid**  
**by Age of Complainant: Complainant Unwilling to Testify**

Age of Complainant	Type of Offence							
	Rape (n=62)	Attempted Rape (n=5)	Sexual Int. With Female Under Age 14 (n=10)	Sexual Int. With Female 14 or 15 (n=24)	Indecent Assault Female (n=135)	Indecent Assault Male (n=21)	Gross Indecency (n=5)	Incest (n=15)
	Non Accumulative Per Cent							
Under age 7	—	—	16.7	—	2.9	2.3	4.3	—
7 – 11 years	—	—	16.7	—	4.0	3.1	—	22.2
12 – 13 years	16.7	—	36.4	—	10.4	7.1	14.3	16.7
14 – 15 years	19.4	—	—	44.4	15.0	11.8	14.2	35.0
16 – 17 years	32.3	13.3	—	—	14.8	25.0	—	62.5
18 – 20 years	40.0	16.7	—	—	14.9	33.3	20.0	—
<b>TOTAL</b>	<b>28.3</b>	<b>9.4</b>	<b>29.4</b>	<b>44.4</b>	<b>9.2</b>	<b>5.8</b>	<b>6.0</b>	<b>33.3</b>

*National Police Force Survey.* Non-accumulative totals based on the proportion of victims who were unwilling to testify to the number of charges not laid and by age group. The eight offences listed accounted for 99.3 per cent of the cases in which the victim was unwilling to testify.

146(2) offence is one where the complainant's lack of consent need not be proved, but she must be shown to have been "of previously chaste character". Although the number of uncharged incest cases was small, that one in three cited the complainant's unwillingness to testify as a reason why charges were not laid is scarcely surprising, given the painful circumstances inherent in an incest trial.

## Spouse of Suspect Unwilling to Testify

This was only a factor in relation to four sexual offences. When the findings were collected, the spouse of an offender charged with indecent assault female or indecent assault male could not be compelled to testify against him; it is not surprising, therefore, that these two offences are virtually not represented in these findings. With respect to the offences of incest and gross indecency, it is probable that, in the uncharged cases in which this reason was cited, the police considered that compelling the offender's spouse to testify against him would do more harm than good. It is also possible that the wife of the offender claimed the "interspousal communications" privilege (considered in Chapter 19, *Evidence of an Accused's Spouse*).

## Details of Offence Vague

This reason was cited most often in uncharged cases involving sexual offences to which considerable social stigma attaches: rape (27.9 per cent) and incest (24.4 per cent). A breakdown by ages of victims is presented in Table 24.24. As noted previously, it is apparent from these findings that young children are no more prone to giving vague accounts to the police than are older children.

## Social Agency Intervention

That charges were sometimes not laid because of the intervention of a social service agency was particularly notable in cases of incest: in three of five uncharged incest cases (60.0 per cent), no criminal charges were laid against the offender because of an agency's intervention on the child's behalf (Table 24.25). Overall, this reason was a factor in about one in seven uncharged cases (14.8 per cent), and was especially apparent in cases involving victims under the age of 16.

## Suspect Cautioned by the Police

The importance of the victim's age in influencing whether the police caution instead of charge is suggested by the findings given in Table 24.26. As noted earlier, the use of informal police "cautions" happened most often where the victim was under 14, and particularly where the victim was under seven years-old. It is evident that the police were aware of the practical realities of



**Table 24.24**  
**Reasons that Police Charges Were Not Laid**  
**by Age of Complainant: Details of Offence Vague**

Age of Complainant	Type of Offence								
	Rape (n=61)	Attempted Rape (n=7)	Sexual Int. With Female Under 14 (n=6)	Sexual Int. With Female 14 or 15 (n=3)	Indecent Assault Female (n=135)	Indecent Assault Male (n=27)	Gross Indecency (n=8)	Buggery (n=3)	Incest (n=11)
	Non Accumulative Per Cent								
Under age 7	—	—	50.0	—	8.0	6.8	17.9	—	—
7 – 11 years	33.3	—	16.7	—	8.3	7.8	7.4	—	33.3
12 – 13 years	33.3	20.0	9.1	—	10.9	9.5	7.1	—	16.7
14 – 15 years	22.4	22.2	—	5.6	12.2	5.9	14.2	75.0	20.0
16 – 17 years	36.9	20.0	—	—	11.2	8.3	—	—	37.5
18 – 20 years	23.1	5.6	—	—	2.8	8.3	—	—	—
<b>TOTAL</b>	<b>27.9</b>	<b>13.2</b>	<b>—</b>	<b>5.6</b>	<b>9.2</b>	<b>7.5</b>	<b>9.6</b>	<b>18.8</b>	<b>24.4</b>

*National Police Force Survey.* Non-accumulative totals based on the proportion of cases in which the details of the offence were vague to the number of charges not laid and by age group. The nine offences listed accounted for 99.2 per cent of the cases in which the details of the offence were listed as being vague.

**Table 24.25**  
**Reasons that Police Charges Were Not Laid**  
**by Age of Complainant: *Involvement of Agency***

Age of Complainant	Type of Offence					
	Rape (n=12)	Indecent Assault Female (n=207)	Indecent Assault Male (n=68)	Gross Indecency (n=16)	Incest (n=27)	Sexual Int. With Female Under Age 14 (n=2)
	Non Accumulative Per Cent					
Under age 7	100.0	21.4	22.7	13.0	—	—
7 – 11 years	—	13.7	18.8	25.9	67.7	—
12 – 13 years	8.3	15.6	23.8	28.6	16.7	—
14 – 15 years	6.0	15.0	5.9	28.6	70.0	—
16 – 17 years	3.1	8.3	8.3	—	62.5	66.7
18 – 20 years	6.2	4.3	8.3	—	100.0	—
TOTAL	5.5	14.1	18.9	19.3	60.0	66.7

*National Police Force Survey.* Non-accumulative totals based on the proportion of cases in which either a child protection agency or other community agency recommended charges not be laid to the total number of cases in which charges were not laid and by age group. The seven offences listed accounted for 96.0 per cent of the cases in which agencies recommended charges not be laid.

**Table 24.26**  
**Reasons that Police Charges Were Not Laid**  
**by Age of Complainant: Suspect Cautioned by the Police**

Age of Complainant	Type of Offence							
	Rape (n=8)	Sexual Int. With Female Under 14 (n=13)	Sexual Int. With Female 14 or 15 (n=19)	Indecent Assault Female (n=367)	Indecent Assault Male (n=93)	Gross Indecency (n=13)	Buggery (n=7)	Incest (n=7)
	Non Accumulative Per Cent							
Under age 7	—	33.3	—	33.0	30.3	30.4	33.3	—
7 – 11 years	—	16.7	—	30.8	25.0	7.4	33.3	33.3
12 – 13 years	—	45.5	—	32.2	23.8	14.3	50.0	—
14 – 15 years	4.5	—	35.2	22.8	17.6	14.3	100.0	10.0
16 – 17 years	3.1	—	—	11.8	25.0	14.3	100.0	12.5
18 – 20 years	4.6	—	—	4.3	16.7	—	—	100.0
TOTAL	3.7	38.2	35.2	25.1	25.8	15.7	43.8	15.5
								22.2

*National Police Force Survey.* Non-accumulative totals based on the proportion of cases in which the police cautioned the suspected offender to the total number of cases in which charges were not laid by the police and by age group. The listing is inclusive.

\* Under *Juvenile Delinquents Act*



successfully prosecuting sexual offenders against young victims, and accordingly, gave "cautions" proportionately more often where the child victim was very young. It is significant, for example, that in about one in three uncharged indecent assault cases (female victims, 33.0 per cent; male victims, 30.3 per cent) where the victim was under seven years of age, the suspect was cautioned but not charged. That the suspect was cautioned but not charged in eight rape cases and seven buggery cases is difficult to account for. With respect to the uncharged incest cases, it is likely that each of the seven suspects who were cautioned but not criminally charged was nonetheless made a party to child protection proceedings instituted on the child's behalf.

## Summary

1. Most offences were reported to the police within 24 hours (65.3 per cent); more than three quarters were reported within one week of their occurrence (76.4 per cent). The findings indicate that the time taken by a young victim or someone on the victim's behalf was not a critical factor in the police decision to lay a criminal charge.
2. For pre-adolescent victims, sexual offences against them were brought to police attention predominantly by persons other than the victims themselves. The likelihood that victims themselves reported the offence to the police increased sharply with older victims.
3. Nine in 10 occurrences (92.3 per cent) were considered to be 'founded' by the police; the trends in this regard in relation to the age of the victims were statistically insignificant. For children under 14 years-old, the proportion of 'founded' occurrences was in the 95 per cent range. The findings indicate that the police believed that the vast majority of the reported incidents had actually occurred.
4. Charges were laid in two in five cases (40.3 per cent) investigated by the police. Whether charges were laid did not vary appreciably with the sex of the victim but the proportion of charges laid was greater in cases involving children under age 16 than that for older victims. The police were no more reluctant to act on the allegations of young children than on those of older adolescents.
5. The reasons why charges were not laid varied by the age and sex of the victims and in relation to the types of sexual offences committed. Proportionately more of the younger victims knew the identity of the suspected offender than did older children and adolescents.
6. The 'age of the child' was the main reason cited in decisions not to lay charges in cases in which the victim was under seven years-old.
7. The findings do not support the assumption that younger victims are less credible than older victims. On average, victims under age 12 were considered more credible than adolescents; victims between 16 and 20 years-old were perceived to be the least credible.
8. Proportionately more older victims than younger victims were unwilling to testify.

9. A similar trend occurred in relation to the details of the offences being reported to be too vague to permit the laying of charges. This factor increased with the age of victims.
10. The intervention of a social service agency was a factor in the police not laying charges mainly with respect to children under age 16.
11. The use of informal 'cautions' against suspected offenders occurred most often when the victim was under age 14, and particularly, where the victim was under age seven.

## Chapter 25

# Elements of the Offences

Drawing upon information obtained in the National Police Force Survey, the findings presented in this chapter provide documentation concerning: the nature of the age disparities between victims and suspected offenders; the listing of sexual offences in relation to the types of sexual acts committed; the use of threats and force against victims; the reactions of victims; and the type of association or relationship between victims and offenders in relation to the ages of the victims and the offences and acts committed against them. The Committee has drawn upon these findings as the basis for a number of its principal recommendations specified in Part III of the Report.

## Age Disparities between Victims and Offenders

In light of government proposals to amend the *Criminal Code* provisions relating to sexual offences against young persons, information was collected in the National Police Force Survey on the age disparities between offenders and their victims. For example, **section 246.1(2) of the *Criminal Code* (a provision which came into force in January, 1983) provides that it is a legal defence to a sexual assault charge if a complainant under 14 years of age consents to the sexual activity and the accused is less than three years older than the complainant. This is a new concept in Canadian criminal law. Under the repealed indecent assault offences, the consent of a person under the age of 14 to be touched sexually by another person was not a defence to a charge.**

The notion of "relative closeness in age" as a legal defence for persons who engage in consensual sexual activity with other young persons has also found expression in recent government proposals. For example, in *Bill C-53*, the "less than three years age disparity" defence was proposed for all forms of consensual sexual activity (including sexual intercourse) with persons under 14, or 14 or 15. Similarly, in a *Working Paper* by the federal Department of Justice in 1982 which modified the proposals advanced in *Bill C-53*, the "less than three years age disparity" defence was applied to consensual sexual activity with persons under 14, and a defence of less than five years age disparity was proposed for consensual sexual activity involving persons 14 or 15 years of age.



The justification for these proposals appears to rest upon several implicit social and legal assumptions, namely, that:

- The law, in principle, should accord young persons greater autonomy to engage in consensual sexual acts with their peers, by removing the criminal sanction against the older party.
- Relative closeness in age between the young persons is itself an indication that the sexual acts engaged in are more likely to be genuinely consensual between the parties.
- Consensual sexual activity between young persons who are close in age is, by itself, not harmful to either of the young participants.
- It is not the function of the criminal law to attempt to regulate consensual sexual behaviour between young persons who are close in age.

In order to test the validity of these assumptions, the findings of the National Police Force Survey were reviewed in relation to the nature of the age disparities between victims and offenders and the types of sexual acts which occurred involving young persons who were close in age that came to police attention. A summary of the findings on age disparities between victims and offenders is given in Table 25.1.

**Table 25.1**  
**Age Disparity between Suspected Sexual Offenders and Victims**

Age of Victim	Age of Offender							
	Younger Than Victim		Less Than 3 Years Older Than Victim		More Than 3 Years Older Than Victim		Total	
	No.	%	No.	%	No.	%	No.	%
Under 7	—	—	12	1.5	790	98.5	802	100.0
7 – 11	5	0.3	38	2.3	1,609	97.4	1,652	100.0
12 – 13	5	0.5	76	7.3	956	92.2	1,037	100.0
14 – 15	17	1.3	132	10.0	1,173	88.7	1,322	100.0
16	14	4.7	38	12.6	249	82.7	301	100.0
17	19	6.7	38	13.5	225	79.8	282	100.0
18	23	8.2	53	18.8	206	73.0	282	100.0
19	24	9.8	47	19.2	173	71.0	244	100.0
20	27	12.9	19	9.1	163	78.0	209	100.0
<b>TOTAL</b>	<b>134</b>	<b>2.2</b>	<b>453</b>	<b>7.4</b>	<b>5,544</b>	<b>90.4</b>	<b>6,131</b>	<b>100.0</b>

*National Police Force Survey.* Category “less than 3 years older” includes persons less than three years older than the victim, except where victims were 19 years-old and older. Information missing for 72 cases.

Two points should be noted in relation to these findings. First, while information was gathered in the National Police Force Survey for all victims under the age of 16, information on occurrences involving victims between the ages of

16 and 20 was collected from only some police forces. This accounts for the marked drop in the number of the total occurrences involving victims age 16 and older. Second, the category "offender less than 3 years older than victim" only applies with strict accuracy to victims aged 18 or younger. Where the victim was 19, this category refers to offenders 19 or 20; where the victim was 20, this category refers to offenders who were also 20. Equally, the category "offender more than 3 years older than victim" only applies to victims 18 or younger. With respect to victims 19 or 20, this category refers to offenders who were 21 or older; this classification masks to some extent incidents in which the offender was less than three years older than the victim. Accordingly, the findings presented in Table 25.1 are most illustrative in relation to occurrences involving victims 18 or younger.

With respect to occurrences involving victims under the age of 18, three consistent trends are apparent:

1. The proportion of offenders who were younger than their victims increases steadily with the ages of victims, from a low of about one in 300 (0.3 per cent) concerning victims under the age of seven, to a high of about one in 12 (8.2 per cent) concerning victims aged 18. Since the *Young Offenders Act* sets the age of criminal responsibility at age 12, it would appear that there will at least be a small number of very young sexual offenders who will have to be dealt with, if at all, under provincial law.
2. The proportion of offenders who were less than three years older than their victims also increases with the ages of victims. When the category "offender younger than victim" is added to category "offender less than 3 years older than victim", the following results are obtained:

Age of Victim	Offender Younger Than or Less Than 3 Years Older Than Victim	
	Number	Per Cent
Under 7	12	1.5
7 - 11	43	2.6
12 - 13	81	7.8
14 - 15	149	11.3
16	52	17.3
17	57	20.2
18	76	27.0

With respect to victims in the 12-15 age group, it appears that a defence based on an age disparity of less than three years would potentially be applicable to a small proportion of cases. The scope of its application would doubtless be widened where an age disparity of less than five years (as proposed by the federal government's "*Working Paper*") applied.

3. The proportion of offenders who were more than three years older than their victims decreased steadily with the ages of victims, from a high of 98.5 per cent concerning victims under the age of seven, to a low of 73.0 per cent concerning victims aged 18. In relation to occurrences involving victims 18 or younger, 91.7 per cent, or about 11 in 12 cases, involved

offenders who were more than three years older than their victims. This proportion is even higher when only occurrences involving victims under the age of 16 are considered: almost 14 in every 15 cases (93.4 per cent) involved offenders who were more than three years older than their victims. Conversely, only in about one in 15 cases (6.6 per cent) was the offender less than three years older than the victim in occurrences involving victims under the age of 16.

The findings given in Table 25.1 indicate the relative extent to which sexual offenders are close in age to their victims, but they do not shed light on the central issue: Are the sexual acts involving two persons who are relatively close in age and which come to police attention generally less serious in nature than those in which there is a wider disparity in age between the parties? That this is so appears to be a premise of recent legislative proposals that provide a legal defence for the older party where consensual sexual acts occur between young persons less than three or five years apart in age.

Tables 25.2 and 25.3 present findings in relation to the use or non-use of threats or force by offenders in occurrences where the offender was either younger than the victim, less than three years older than the victim, or more than three years older than the victim. Where threats or force were used by an offender, there obviously was no genuine consent on the victim's part. Further, where the victim was 12 years-old or older and no threats or force were used by the offender, this indicates only that there was a possibility that the victim gave a genuine consent. A key determination, then, is whether the non-use of threats or force by offenders and the consequent possibility that victims gave a genuine consent (although the act was legally proscribed on other grounds, for example, sexual intercourse with females under 14, or 14 or 15) varied with the relative ages of offenders and victims. The findings in this regard are presented in Table 25.2.

**Table 25.2**  
**The Use of Threats or Force**  
**by Disparities in Age between Suspected Offenders and Victims**

The Use or Non-use of Threats or Force by Offenders	Offender Younger Than Victim	Offender Less Than 3 Years Older Than Victim	Offender More Than 3 Years Older Than Victim
	Per Cent	Per Cent	Per Cent
Victim threatened	1.0	2.3	3.7
Victim forced	60.8	70.6	56.0
Victim neither threatened nor forced	38.2	27.1	40.3
TOTAL	100.0	100.0	100.0

*National Police Force Survey.*



Overall, about three in five victims were either threatened or forced to engage in the sexual act or acts with the offender. What is striking is that, proportionately, offenders who were less than three years older than their victims were appreciably more likely to use threats or force (72.9 per cent) than offenders who were more than three years older than their victims (59.7 per cent). These findings argue strongly against the advisability of introducing a “close in age” exception into the provisions of *Criminal Code* sexual offences. Only slightly more than one in four (27.1 per cent) occurrences involving persons less than three years apart in age involved no threats or force by the offender, and therefore, the possibility of genuinely consensual sexual interaction was smaller in these instances than in either of the other two categories.

**Table 25.3**  
**The Use of Threats or Force by Offenders**  
**by Ages of Victims in Relation to**  
**Disparities in Age between Suspected Offenders and Victims**

Age of Victim	Offender Younger Than Victim		Offender Less Than 3 Years Older Than Victim		Offender More Than 3 Years Older Than Victim	
	Threats or Force	No Threats or Force	Threats or Force	No Threats or Force	Threats or Force	No Threats or Force
	Per cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under 7	52.0	48.0	81.8	18.2	63.6	36.4
7 – 11	44.7	55.3	81.8	18.2	57.1	42.9
12 – 13	50.0	50.0	75.0	25.0	50.2	49.8
14 – 15	64.0	36.0	62.4	37.6	59.3	40.7
16 – 17	75.0	25.0	75.9	24.1	69.4	30.6
18 – 20	75.9	24.1	75.7	24.3	73.5	26.5
TOTAL	61.8	38.2	72.9	27.1	59.7	40.3

*National Police Force Survey.*

Findings concerning the use of threats or force by offenders in relation to victims of certain ages are presented in Table 25.3. The findings indicate that, in general, victims of all ages were proportionally more likely to be threatened or forced by offenders less than three years older than they, than by offenders either younger than or more than three years older than their victims. This finding is especially stark in relation to victims under the age of 14: in more than four in five (81.8 per cent) occurrences involving victims 11 or younger, and where the offenders were less than three years older than their victims, threats or force had been used. This proportion dropped only slightly with respect to the same category of offenders in occurrences involving victims 12 or 13 years of age (75.0 per cent). With respect to victims 14 and older, the use of threats or force by offenders is virtually a constant, and does not vary appreciably with disparities in age between offenders and victims.

The findings strongly suggest that young victims are as likely, and often more likely, to be threatened or forced to engage in sexual acts by persons relatively close in age than by older persons. This conclusion is supported by the Committee's complementary findings in the National Police Force Survey concerning the reactions of victims to the sexual encounter, particularly when viewed in relation to the age disparity between the offender and victim.

**Table 25.4**  
**Reactions of Victims by**  
**Disparities in Age between Suspected Offenders and Victims**

Reaction of Victim to Sexual Encounter	Offender Younger Than Victim	Offender Less Than 3 Years Older Than Victim	Offender More Than 3 Years Older Than Victim
	Per Cent	Per Cent	Per Cent
Resisted	61.2	53.1	50.6
Resisted with a weapon	0.1	0.9	0.2
Fled	22.7	22.9	15.5
Submitted, but did not consent	14.4	15.7	25.5
Willingly participated	1.6	7.4	8.2
TOTAL	100.0	100.0	100.0

*National Police Force Survey.*

In light of the findings presented in Table 25.4, it is apparent that most young sexual victims either resisted or fled from their assailants. A much smaller proportion submitted without consenting, and few willingly participated in the sexual encounter. Proportionately, more resistance was offered to younger offenders than to offenders more than three years older than their victims; correspondingly, more victims either submitted to or willingly participated in the sexual encounter with offenders more than three years older than they, than did victims whose offenders were relatively younger. This trend reveals itself more sharply, as documented in the findings given in Table 25.5, when specific age groups of victims are considered in relation to their resistance, submission, or willing participation in the sexual encounter.

The assumption that sexual encounters between young persons close in age which come to police attention are less threatening or serious to the complainant is refuted by the findings given in Table 25.5. Although, in general, very young victims were less likely to resist their assailants, it is apparent that the proportion of victims who resisted their assailants rises markedly with age, from about two in three cases involving children 7-11 to more than three in four cases involving victims 16 and older. Further, offenders comparatively close in age to their victims posed a greater threat (in terms of the resistance offered by victims) than did offenders more than three years older than they.

Table 25.5

**Reactions of Victims by their Ages in  
relation to Disparities in Age between Suspected Offenders and Victims**

Age of Victim	Offender Younger Than Victim		Offender Less Than 3 Years Older		Offender More Than 3 Years Older	
	Resisted	Willing or Submitted	Resisted	Willing or Submitted	Resisted	Willing or Submitted
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under 7	72.2	27.8	30.0	70.0	36.6	63.4
7 – 11	85.7	14.3	66.7	33.3	66.5	33.5
12 – 13	88.9	11.1	80.0	20.0	70.5	29.5
14 – 15	87.2	12.8	68.0	32.0	67.6	32.4
16 – 17	79.3	20.7	83.1	16.9	73.2	26.8
18 – 20	85.6	14.4	84.0	16.0	77.1	22.9
TOTAL	84.0	16.0	76.9	23.1	66.3	33.7

*National Police Force Survey. Categories include: Resisted, fled, used weapon; and Willing and Submitted.*

A complementary means of testing whether sexual encounters between persons close in age are qualitatively different from those in which there is a wide age disparity between the parties is to examine the nature of the sexual acts that occur in these different contexts. The salient finding documented in Table 25.6 is the sheer comparability in the types of sexual acts perpetrated by offenders who were either younger than, less than three years older than, or more than three years older than their victims. For each group of offenders, the acts of “fondling breasts/buttocks”, “fondling genitals”, and “kissing sexual parts of the body” constituted the majority of sexual acts committed, and there are no appreciable differences in the nature of sexual acts perpetrated by offenders either younger, about the same age, or more than three years older than their victims.

In relation to the sexual encounters involving young persons that came to police attention, the findings clearly indicate that enacting a special “close in age” exception to the law of sexual offences against young persons would likely serve to remove protection for young persons. Such a proposal is not supported by the Committee’s research findings.

In the Committee’s judgment, a special “close in age” exception in the law of sexual offences is wrong in principle. In many sexual offences (for example, the three forms of “sexual assault” in the *Criminal Code*), proving the complainant’s lack of consent is a prerequisite to a successful prosecution. This is, for reasons given in Part III of the Report, often difficult to prove, and typically reduces to a contest between the perceived credibility of the complainant and the accused. Where a legal “close in age” exception exists, there is a real possibility that prosecutorial decisions may be influenced in dif-



ficult cases by the fact that the offender is within the age exception, notwithstanding that the complainant states that he or she did not consent. Were this to occur, it would have the effect of removing protection from young victims of sexual offences whose assailants were close in age to them, and would contradict the traditional policy of the criminal law in protecting the bodily integrity of all persons from unwanted touchings. For these reasons, the Committee considers that the “close in age” exception in the context of sexual offences involving young persons is an unacceptable legal reform.

**Table 25.6**  
**Types of Sexual Acts Committed in relation to**  
**Disparities in Age between Suspected Offenders and Victims**

Types of Sexual Acts Committed Against Victims	Offender Younger Than Victim (n=134)	Offender Less Than 3 Years Older (n=453)	Offender More Than 3 Years Older (n=5544)
	Per Cent	Per Cent	Per Cent
Fondling breasts/buttocks	31.6	31.8	24.0
Fondling genitals	29.4	29.7	31.7
Kissing sexual parts	9.3	9.0	10.3
Thigh intercourse	0.9	1.1	2.1
Oral/genital	5.3	3.4	8.1
Oral/anal	0.3	—	0.6
Attempted vaginal penetration with penis	3.2	3.7	4.1
Vaginal penetration with penis	15.0	17.8	10.3
Vaginal penetration with finger	2.3	1.6	4.1
Vaginal penetration with object	0.2	0.2	0.4
Attempted anal penetration with penis	0.9	0.5	1.5
Anal penetration with penis	0.7	0.7	1.8

*National Police Force Survey.*

## Types of Sexual Offences by Sexual Acts Committed

From the information recorded on the police general occurrence form, each sexual act that was reported to have occurred was noted, regardless of the number of sexual offences specified on the form. For example, although the investigating officer may have indicated that the occurrence was “rape”, the report would invariably disclose that sexual acts in addition to sexual intercourse occurred, often as a prelude to the sexual intercourse. Further, in a number of instances, more than one sexual offence was listed on the general

occurrence form; no indication was given in these reports concerning which sexual acts corresponded to which sexual offence under investigation. Accordingly, the total number of sexual acts which were noted greatly exceeds the total number of sexual offences specified on the general occurrence forms.

Of the 6203 police occurrences on which information was compiled by the Committee, the great preponderance (5854, or 94.4 per cent) listed only one sexual offence on the general occurrence form. In the balance of these cases (349, or 5.6 per cent), some combination of two or more sexual offences was listed.

Single Offence Reported	Number of Occurrences
Rape	357
Attempted rape	81
Sexual intercourse with a female under 14	82
Sexual intercourse with a female 14 or 15	64
Sexual intercourse with step-daughter, foster daughter, or female ward	23
Sexual intercourse with a feeble-minded female	5
Incest	76
Indecent assault on a female	2,311
Indecent assault on a male	593
Buggery	23
Gross indecency	101
Corrupting children	1
Contributing to juvenile delinquency	114
Indecent act	2,023
TOTAL	5,854

The offences of indecent assault on a female (2311) and indecent act (2023) were by far the most frequently listed sexual offences. Next in frequency were indecent assault on a male (593), rape (357) and contributing to juvenile delinquency (114). Knowing the type of sexual offence listed by the investigating police officer, however, gives only a rough indication of the nature of the sexual acts committed. In this regard, information was collected in the National Police Force Survey both on the acts performed by the suspect on the victim and the acts performed by the victim on the suspect. The findings given in Tables 25.7 and 25.8 pertain to the 5854 occurrences in which a single sexual offence was listed by the investigating police officer.

The findings given in these tables indicate that acts of exposure constituted the most prevalent sexual act committed. The fondling of young persons' genitalia and breasts or buttocks were the next most prevalent sexual

**Table 25.7**  
**Sexual Offences in relation to Sexual Acts Performed on the Victim by the Suspect**

Sexual Act	Rape (n=357)	Attempted Rape (n=81)	Sex. Int. Female Under 14 (n=82)	Sex. Int. Female 14 or 15 (n=64)	Sex. Int. Feeble- Minded Female (n=5)	Indecent Assault Female (n=2,311)	Indecent Assault Male (n=593)	Incest (n=76)	Sex. Int. Step- Daughter etc. (n=23)	Buggery (n=23)	Gross Indecency (n=101)	Indecent Act (n=2,023)	Corrupt- ing Children (n=1)	Contri- buting to/ J.D.A. (n=114)
Fondling/touching breasts/buttocks	99	27	20	16	2	1,203	74	26	2	3	6	10	1	25
Fondling/touching genital area	79	24	15	14	2	1,193	360	25	5	2	21	6	1	49
Kissing mouth and other areas of the body	65	21	14	13	—	330	58	12	—	4	11	5	—	20
Thigh intercourse	4	2	1	1	—	81	12	2	4	—	3	—	—	3
Oral/genital	34	5	4	2	—	108	142	7	1	3	41	1	—	27
Oral/anal	—	—	—	—	—	16	6	—	2	—	1	—	—	—
Attempted vaginal penetration with penis	18	44	3	—	—	128	2	6	1	1	3	—	—	—
Vaginal penetra- tion with penis	326	4	75	61	4	41	2	60	2	1	1	—	—	20
Vaginal penetra- tion with finger	14	10	—	1	1	164	1	7	—	—	1	—	—	1
Vaginal penetra- tion with object	1	—	—	—	—	14	—	—	—	—	1	—	—	—
Attempted anal penetration with penis	7	1	1	—	—	19	31	3	4	4	3	—	—	—



Table 25.7 (continued)

## Sexual Offences in relation to Sexual Acts Performed on the Victim by the Suspect

Sexual Act	Rape (n=357)	Attempted Rape (n=81)	Sex. Int. Female Under 14 (n=82)	Sex. Int. Female 14 or 15 (n=64)	Sex. Int. Feeble- Minded Female (n=5)	Indecent Assault Female (n=2,311)	Indecent Assault Male (n=593)	Incest (n=76)	Sex. Int. Step- Daughter etc. (n=23)	Buggery (n=23)	Gross Indecency (n=101)	Indecent Act (n=2,023)	Corrupt- ing Children (n=1)	Contri- buting to/ J.D.A. (n=114)
Anal penetration with penis	11	—	2	—	—	2	17	3	1	17	2	1	—	3
Anal penetration with finger	1	1	—	—	—	10	11	2	—	1	2	—	—	—
Anal penetration with an object	1	—	—	—	—	2	7	—	—	—	—	—	—	—
Bestiality	—	—	—	—	—	—	—	—	—	—	—	1	—	—
Suspect exposed genitals	20	12	3	3	—	244	68	5	1	1	31	1,862	—	20
Suspect exposed nude body	7	6	6	5	—	67	13	5	—	—	10	189	—	21
Suspect aided another in sexual act	6	1	2	1	—	7	5	—	—	—	—	2	—	2
Suspect attempted to remove or removed clothing	34	20	2	4	1	185	50	8	1	2	9	7	—	15
TOTAL NUMBER OF SEXUAL ACTS	727	178	148	121	10	3,814	859	171	24	39	146	2,084	2	206

National Police Force Survey. Listing of cases in which only one sexual offence was reported, n = 5854.

Table 25.8

## Sexual Offences in relation to Sexual Acts Performed on the Suspect by the Victim

Sexual Act	Rape (n=357)	Attempted Rape (n=81)	Sex. Int. Female Under 14 (n=82)	Sex. Int. Female 14 or 15 (n=64)	Sex. Int. Feeble- Minded Female (n=5)	Indecent Assault Female (n=2311)	Indecent Assault Male (n=593)	Incest (n=76)	Sex. Int. Step- Daughter, etc. (n=23)	Buggery (n=23)	Gross Indecency (n=101)	Indecent Act (n=2023)	Contri- buting to/J.D.A. (n=114)
Fondling/touching breasts/buttocks	1	—	2	1	—	10	8	1	—	—	11	1	3
Fondling/touching genital area	10	5	7	4	—	156	71	9	4	—	4	11	18
Kissing mouth and other areas of the body	1	—	7	2	—	30	8	3	3	—	—	—	7
Thigh intercourse	—	—	—	—	—	2	—	—	—	—	—	—	—
Oral/genital	53	2	6	2	—	100	100	12	2	3	4	—	21
Oral/anal	—	—	—	—	—	2	2	—	—	—	—	—	—
Attempted vaginal penetration with penis	1	—	1	1	—	—	—	3	—	—	—	—	—
Vaginal penetra- tion with penis	—	—	—	—	—	—	—	—	—	—	—	—	—
Vaginal penetra- tion with finger	—	—	—	—	—	3	—	—	—	—	—	—	—
Vaginal penetra- tion with object	—	—	—	—	—	—	—	—	—	—	—	—	—
Attempted anal penetration with penis	—	—	—	—	—	—	—	—	—	—	—	—	—

Table 25.8 (continued)

Sexual Offences in relation to Sexual Acts Performed on the Suspect by the Victim

Sexual Act	Rape (n = 357)	Attempted Rape (n = 81)	Sex. Int. Female Under 14 (n = 82)	Sex. Int. Female 14 or 15 (n = 64)	Sex. Int. Feeble- Minded Female (n = 5)	Indecent Assault Female (n = 2311)	Indecent Assault Male (n = 593)	Incest (n = 76)	Sex. Int. Step- Daughter, etc. (n = 23)	Buggery (n = 23)	Gross Indecency (n = 101)	Indecent Act (n = 2023)	Contri- buting to/J.D.A. (n = 114)
Anal penetration with penis	—	—	—	—	—	—	4	—	—	1	—	—	—
Anal penetration with finger	—	—	—	—	—	—	—	—	—	—	—	—	—
Anal penetration with an object	—	—	—	—	—	—	—	—	—	—	—	—	—
Bestiality	—	—	—	—	—	—	—	—	—	—	—	—	—
Victim exposed genitals	3	1	1	2	—	8	18	3	—	—	—	3	1
Victim exposed nude body	9	5	4	3	—	27	8	5	—	—	1	—	8
Victim aided another in sexual act	—	—	2	—	—	1	—	—	—	—	—	—	1
Victim removed clothing	—	—	—	—	—	5	1	—	2	—	—	—	1
TOTAL NUMBER OF SEXUAL ACTS	78	13	30	15	—	344	220	36	11	4	20	15	60

National Police Force Survey. Listing of cases in which only one sexual offence was reported, n = 5853 with one case of corrupting a child not listed.



acts, followed by acts of vaginal intercourse. The most striking implication of these findings is the findings themselves: virtually every conceivable sexual act is represented, to greater or lesser degrees. Plainly, child sexual abuse comprises a wide variety of sexual behaviours. On average, for the 5584 cases in which a single sexual offence was reported, 1.5 sexual acts had been committed against young victims.

**This information makes it clear that child sexual abuse not only involves acts committed against the child or youth, but that offenders may also induce or coerce the young person to manipulate the offender's body.** In about one in seven cases (14.5 per cent), the victim was induced or forced to perform sexual acts on the offender (Table 25.8). Acts of this kind tended to occur more frequently in situations in which the offender was either well known to the child or held a position of trust to the child. In slightly less than half of the cases in which the offences of incest (47.4 per cent) and sexual intercourse by a guardian (47.8 per cent) were reported, the child or youth had performed sexual acts on the suspected offender.

Many sexual offences in Canadian criminal law are vague: for instance, the offence of 'gross indecency' subsumes a wide variety of sexual acts. In addition, even where the offence is not vague, for example, sexual intercourse with a girl under 14, other sexual acts between the parties may have occurred as a prelude to the sexual intercourse, which are not relevant for the purpose of proving that particular offence. The findings show clearly that a wide range of sexual acts is subsumed under different types of sexual offences, even where specific acts are proscribed. For seven sexual offences in which the acts proscribed are clearly specified, there was congruence between the acts and the behaviours prohibited in the offences in about six in seven instances (86.7 per cent). In the case of the offence of buggery for which 23 offences were docu-

Offences Specifying Sexual Intercourse	Number of Offences Reported	Reported Acts of Vaginal Intercourse with Penis	Proportion of Acts to Offences
			Per cent
Rape	357	326	91.3
Incest	76	60	78.9
Sexual intercourse, under 14	82	75	91.5
Sexual intercourse, 14-15	64	61	95.3
Sexual intercourse, step-daughter, etc.	23	2	8.7
Sexual intercourse, feeble-minded	5	4	80.0
TOTAL	607	528	87.0

mented, anal penetration with a penis was reported to have occurred in about four in five (78.3 per cent) of these incidents (17 involving acts committed against victims and one case where a victim had performed this act on a suspected offender.

Six sexual offences proscribe sexual intercourse; in relation to these offences, there was considerable variation in regard to whether sexual intercourse with a penis was reported to have occurred.

In the case of vaguely worded offences, such as indecent assault on a female and indecent assault on a male, the full range of sexual acts was reported to have been committed. These findings strongly support the Committee's recommendations concerning the need to restructure the sexual offences to correspond more directly to the types of sexual acts committed. When the offences reported are considered in relation to the sexual acts committed, the findings indicate that a wide range of sexual acts is subsumed under different types of sexual offences, even where specific behaviours are proscribed.

## Threats and Use of Force

Two points must be noted in relation to the findings concerning the use of threats or force by offenders against victims. First, the National Police Force Survey, by definition, provides information only on sexual offences against young persons that came to police attention. Second, that the police were notified does not necessarily mean that the sexual act was committed without the young person's consent. Where the child is very young, a valid consent to sexual activity should not be presumed. Moreover, until the amendments introduced in 1983, Canadian law deemed the consent of a child under 14 not to be a defence to sexual offence charges, even where the young person arguably appreciated the nature of the sexual act and participated in it freely and willingly with his or her partner.

Where the young person is 14 or older, the law, in general, recognizes that he or she can give both a *de facto* and a *legal* consent to certain sexual acts with another person; the question becomes, where a form of sexual assault (formerly indecent assault) is alleged, whether the young person in fact consented. This is a subjective issue, one that does not readily lend itself to statistical treatment. What is both possible and illuminating, however, is to take into account the objective considerations from which inferences about the young person's consent or lack of consent can be drawn, for example, the use of threats or force by the offender and the nature of the victim's resistance to the sexual act. An assessment of these considerations sheds light on the consensual or non-consensual nature of the sexual acts involving young persons about whom information was obtained in the National Police Force Survey.

The category "victim was threatened" includes all situations in which the victim's submission to or acquiescence in the sexual act was accomplished by

means of the offender's threats directed towards the victim. The category "victim was forced" includes all situations in which the victim's submission to or acquiescence in the sexual act was accomplished either by the offender's physical coercion of the victim, his or her direct assault on the victim, or his or her brandishing a weapon during the sexual act.

**Under the state of the law as it existed when the findings were collected, the "consent" of a person under age 14 to any form of sexual activity with another person was not a defence for the accused. In this regard, almost three in five (56.3 per cent) of the occurrences studied in the survey disclosed a sexual offence under the then existing criminal law. Of the 5,913 occurrences, for which this information was available, 3,327 (or 56.3 per cent) involved a child under the age of 14, and 4,599 (or 77.8 per cent) involved a child under the age of 16.**

Children under Age 14	Males	Females	Total
Number	669	2658	3327
Per cent of all all victims	77.6	52.6	56.3

The findings given in Table 25.9 and 25.10 indicate that threats or force were used against the victim in more than three in five occurrences with respect both to female victims (61.0 per cent) and male victims (61.8 per cent). The use of threats by the offender was less of a factor in occurrences involving children under the age of seven than in incidents involving older children. Further, children of both sexes under the age of 14 were less likely to be either threatened or forced by the offender than were young persons 14 and older.

## Resistance Offered by Victims

That the victim was neither threatened nor forced to submit to or acquiesce in the sexual act with the offender does not imply that the victim gave his or her consent in a manner recognized by law. It only implies that this was at least a possibility in any given case. The magnitude of this possibility can be better assessed by considering the reactions of young sexual victims to the incident in question, as noted by the investigating officer.

The category "victim used weapon" refers to cases in which the victim used an object in order to defend himself or herself from the offender. The category "submitted" refers to cases in which the victim submitted to the sexual act, without consenting to the sexual act.

Children under seven years of age, and of both sexes, tended to be more compliant with their molesters; this is neither surprising developmentally nor



Table 25.9

**The Use or Non-Use of Threats and Force in Sexual Offences  
Committed against Females under Age 21**

Age of Female against whom Offence was Alleged to have been Committed	Victim was Threatened		Victim was Forced		Victim was neither Threatened nor Forced		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	9	1.7	332	61.7	197	36.6	538	100.0
7 – 11 years	40	3.2	643	50.7	584	46.1	1267	100.0
12 – 13 years	22	2.6	428	50.2	403	47.2	853	100.0
14 – 15 years	36	3.1	659	57.7	447	39.2	1142	100.0
16 – 17 years	22	3.8	387	67.7	163	28.5	572	100.0
18 – 20 years	15	2.2	489	72.0	175	25.8	679	100.0
<b>TOTAL</b>	<b>144</b>	<b>2.8</b>	<b>2938</b>	<b>58.2</b>	<b>1969</b>	<b>39.0</b>	<b>5051</b>	<b>100.0</b>

*National Police Force Survey. Information missing for 241 cases.*

Table 25.10  
The Use or Non-Use of Threats and Force in Sexual Offences  
Committed against *Males* under Age 21

Age of Male against whom Offence was Alleged to have been Committed	Victim was Threatened		Victim was Forced		Victim was neither Threatened nor Forced		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	9	4.2	121	56.5	84	39.3	214	100.0
7 — 11 years	28	8.8	188	58.7	104	32.5	320	100.0
12 — 13 years	4	3.0	64	47.4	67	49.6	135	100.0
14 — 15 years	6	4.6	70	53.8	54	41.6	130	100.0
16 — 17 years	2	5.9	19	55.9	13	38.2	34	100.0
18 — 20 years	3	10.3	19	65.5	7	24.2	29	100.0
TOTAL	52	6.0	481	55.8	329	38.2	862	100.0

National Police Force Survey. Information missing for 49 cases.

relevant legally. Over half of the girls (55.2 per cent) and about a third of the boys (32.5 per cent) in this age group submitted without resistance to the acts committed against them.

These findings indicate that a low proportion of young victims was reported to have “participated willingly” in the sexual act with the other party, especially in occurrences involving female victims. Of female victims, only about one in 16 (6.1 per cent) was reported to have willingly participated in the sexual act. A more realistic measure in this regard is female victims in the 14-20 age group, since the “willing participation” of a female under 14 was not a valid defence for the accused when the findings were collected. Of female victims between the ages of 14 and 20, about one in 20 (5.2 per cent) was reported to have participated willingly (i.e., “consented”) in the sexual act with the other party.

Reactions of Victims	Male Victims (n = 737)	Female Victims (n = 5250)
	Per Cent	Per Cent
Used weapon	0.1	0.2
Resisted	40.2	54.2
Fled	9.0	18.1
Submitted	35.5	21.3
Participated willing	15.2	6.1
TOTAL	100.0	99.9*

Information missing for 216 cases. (42 female victims, 174 male victims)

\*Rounding error

Proportionately, more male than female victims were reported to have participated willingly in the sexual act with the suspect (15.2 per cent for males, as opposed to 6.1 per cent for females). Considering only male victims in the 14-20 age group, about one in six (16.8 per cent) was reported to have participated willingly. Virtually all of these incidents involving male victims were homosexual in nature and would have been charged under the offences of indecent assault on a male, buggery, gross indecency or contributing to juvenile delinquency. **The findings indicate that, if the age of “full consent” to heterosexual or homosexual behaviour were lowered from 21 to 18, this would not affect police charging practices to any appreciable extent.**

The findings on the lack of “willing participation” by young persons are significant in themselves, but it should not be overlooked that the protection of young persons’ bodily integrity against unwanted sexual touchings is only one of the legitimate policy bases of the criminal law of sexual offences, particularly those committed against young persons. Notwithstanding that a young



person can and does give a *de facto* consent to sexual activity with another person, the criminal law has traditionally played a role in sanctioning offenders who engage in sexual acts thought to be harmful to young persons (for example, sexual intercourse and buggery) or who exploit a young person sexually by misusing a position of trust or authority (for example, the offences of incest, sexual intercourse with one's step-daughter and contributing to juvenile delinquency). That a young person willingly participates in a sexual act with another person does not conclude the question whether such behaviour is within the legitimate province of the criminal law. Other crucial considerations are the age of the young person, the nature of the sexual act engaged in and the social or legal relationship between the young person and his or her sexual partner.

**It is clear from the findings that the vast majority of police occurrences indicating a sexual offence against a young person involved either young children unable to give either a *de facto*, and certainly not a legal, consent to sexual behaviour, or older children who in fact did not consent to the behaviour in question. There is no case to be made from these findings that police resources are being used to investigate either unfounded allegations, or sexual behaviour involving young persons that is venial or trivial in nature. Nor is it plausible to infer from these findings that a substantial proportion of the incidents involved "sexual experimentation" among teenagers, in which police intervention was seen to be unnecessary or heavy-handed. On the contrary, the findings strongly suggest that the vast majority of these incidents were considered serious both by the young person or by others on his or her behalf, and by the police.**

## Sexual Offences by Type of Association

A key social issue is the relative extent to which young persons are at risk of sexual abuse from different persons in their lives. This social issue generates a corollary legal one, namely, how should the criminal law (child welfare law implicitly does so) reflect the fact that young persons may be proportionately more at risk from persons who are prominent in their lives, for example, family members and persons in a guardianship or trust relationship with respect to the young person? The following review presents the findings from the National Police Force Survey with respect to: the relationship between offenders and their victims; the types of sexual offences committed; the nature of the sexual acts committed; and the ages of the victims. In light of the fact that more than one offence may have been committed, the listing of offences given in Table 25.11 exceeds the number of victims about whom information was assembled in the National Police Force Survey. In addition to these summary findings, the specific listing of offences by the types of association is given in Tables 25.12 to 25.18. Several trends are apparent from these findings.

- Male persons whom the female person either knew or was acquainted with (191 offences) accounted for almost as many rape offences as male persons in the "other/stranger" category (219 offences). This trend was only slightly less evident with respect to the attempted rape offences.

Sexual Offences Committed against Children under Age 21 by Type of Association with Suspected Offender

Type of Offence Committed Against the Child	Person Committing Offences Against the Child							
	Incest Relationship	Other Blood Relative	Guardian-Ship Position	Other Family Member	Position of Trust	Friends/Acquaintances	Other/Stranger	Unknown
Rape	8	10	9	10	4	150	219	5
Attempted rape	1	3	1	3	2	28	59	1
Intercourse with female under age 14	8	8	21	13	5	52	7	4
Intercourse with female age 14 but under 16	2	5	8	3	—	58	8	2
Intercourse with feeble-minded	—	—	—	—	1	1	5	—
Indecent assault female	190	93	111	76	112	787	1,101	22
Indecent assault male	21	14	22	10	56	263	274	10
Incest	93	—	3	2	—	—	1	—
Intercourse with female ward	—	—	7	2	—	—	—	—
Buggery	2	5	8	3	—	34	16	—
Gross indecency	34	10	18	14	14	82	75	7
Indecent act	3	—	2	—	5	104	1,938	7
Corrupting child Contributing to/J.D.A.	3	—	—	1	—	—	1	—
	16	5	4	10	11	124	25	11
TOTAL	381	153	214	147	210	1,683	3,729	69
								6,586

National Police Force Survey.

## Sexual Offences Committed against Children under Age 21 involving a Relationship of Incest

Type of Sexual Offence Committed Against the Child	Person Committing Offences Against the Child								Total
	Father	Mother	Brother	Half-Brother	Sister	Half-Sister	Grandfather	Grandmother	
Rape	5	—	1	2	—	—	—	—	8
Attempted rape	—	—	—	—	—	—	1	—	1
Intercourse with female under age 14	6	—	—	1	—	—	1	—	8
Intercourse with female age 14 but under 16	—	—	1	1	—	—	—	—	2
Intercourse with feeble-minded	—	—	—	—	—	—	—	—	—
Indecent assault female	158	1	18	2	1	—	10	—	190
Indecent assault male	16	—	1	1	—	—	3	—	21
Incest	81	1	10	1	—	—	—	—	93
Seduction of female ward	—	—	—	—	—	—	—	—	—
Buggery	2	—	—	—	—	—	—	—	2
Gross indecency	28	1	1	3	—	—	1	—	34
Indecent act	3	—	—	—	—	—	—	—	3
Corrupting a child	2	1	—	—	—	—	—	—	3
Contributing to/J.D.A.	12	1	—	2	—	—	1	—	16



Table 25.13

**Sexual Offences Committed against Children under Age 21  
by Relatives (Non-Incest)**

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child					
	Uncle	Aunt	Nephew	Niece	Cousin	Total
Rape	6	—	—	—	4	10
Attempted rape	2	—	—	—	1	3
Intercourse with female under 14	6	—	—	—	2	8
Intercourse with female 14 but under 16	5	—	—	—	—	5
Intercourse with feeble-minded	—	—	—	—	—	—
Indecent assault female	74	—	1	—	18	93
Indecent assault male	11	—	1	—	2	14
Incest	—	—	—	—	—	—
Seduction female ward	—	—	—	—	—	—
Buggery	5	—	—	—	—	5
Gross indecency	9	—	—	—	1	10
Indecent act	—	—	—	—	—	—
Corrupting child	—	—	—	—	—	—
Contributing to/ J.D.A.	3	—	1	—	1	5

*National Police Force Survey.*

- By way of contrast, the “unlawful sexual intercourse” offences were committed in the vast majority of cases by male persons whom the girl either knew or was acquainted with (107 of the 118 offences where the girl was under 14, and 76 of the 86 offences where the girl was 14 or 15). This may be accounted for by the fact that the unlawful sexual intercourse offences can be charged notwithstanding that the girl consented to the sexual intercourse. What is striking is that, with respect to girls under 14, offences of this sort committed by friends or acquaintances (52 offences) were fewer in number than the number of offences committed by the girls’ male family members, guardians, or persons in positions of trust (55 offences). This trend dropped sharply with respect to girls 14 or 15.
- Concerning the offences of indecent assault on a male or female, male persons whom the young person either knew or was acquainted with accounted for a sizeably greater proportion of offences against both males and females than male persons in the “other/stranger” category. With respect

to offences of indecent assault on a female, the breakdown was 1369 offences in which the female knew or was acquainted with the offender, as opposed to 1101 offences in which the offender was in the “other/stranger” category. This proportion was even greater in relation to offences of indecent assault on a male: 386 offences in which the male victim knew or was acquainted with the male offender, as opposed to 274 offences in which the offender was in the “other/stranger” category.

- Of the 99 offences listed as incest, six involved offenders who could not legally be convicted of that offence, since they were outside the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*. In these instances, it appears that the police officers involved may have been unaware of the specific legal elements of the incest offence.

**Table 25.14**  
**Sexual Offences Committed against Children under Age 21**  
**by Persons in Guardianship Positions**

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child				
	Step-Father	Foster-Father	Legal Guardian	Employer/Supervisor	Total
Rape	6	2	—	1	9
Attempted rape	1	—	—	—	1
Intercourse with female under 14	21	—	—	—	21
Intercourse with female 14 but under 16	8	—	—	—	8
Intercourse with feeble-minded	—	—	—	—	—
Indecent assault female	79	4	1	27	111
Indecent assault male	7	2	—	13	22
Incest	3	—	—	—	3
Seduction female ward	6	1	—	—	7
Buggery	7	1	—	—	8
Gross indecency	14	1	—	3	18
Indecent act	—	—	—	2	2
Corrupting child	—	—	—	—	—
Contributing to/J.D.A.	1	—	—	3	4

*National Police Force Survey.*

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child						
	Adoptive Father	Adoptive Brother	Adoptive Grandfather	Foster Brother	Common-Law Parent	Other Family Members	Total
Rape	1	—	1	—	4	4	10
Attempted rape	—	—	—	—	2	1	3
Intercourse with female under age 14	2	—	—	1	3	7	13
Intercourse with female age 14 but under 16	—	—	—	—	2	1	3
Intercourse with feeble-minded	—	—	—	—	—	—	—
Indecent assault female	8	—	5	—	50	13	76
Indecent assault male	—	—	—	—	5	5	10
Incest	1	—	—	—	1	—	2
Seduction of female ward	2	—	—	—	—	—	2
Buggery	—	1	—	—	1	1	3
Gross indecency	2	—	—	—	11	1	14
Indecent act	—	—	—	—	—	—	—
Corrupting a child	—	—	—	—	1	—	1
Contributing to/J.D.A.	1	—	—	—	4	5	10

National Police Force Survey.



Table 25.16

## Sexual Offences Committed against Children under Age 21 by Persons in Positions of Trust

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child						Total
	Day Care Worker	Teacher	Youth Worker	Baby-Sitter	Group Home Worker	School Bus Driver	
Rape	—	1	—	3	—	—	4
Attempted rape	—	—	—	2	—	—	2
Intercourse with female under age 14	—	—	—	5	—	—	5
Intercourse with female age 14 but under 16	—	—	—	—	—	—	—
Intercourse with feeble-minded	—	1	—	—	—	—	1
Indecent assault female	3	8	5	86	2	8	112
Indecent assault male	2	6	6	41	1	—	56
Incest	—	—	—	—	—	—	—
Seduction of female ward	—	—	—	—	—	—	—
Buggery	—	—	—	—	—	—	—
Gross indecency	2	—	1	11	—	—	14
Indecent act	—	1	—	3	1	—	5
Corrupting a child	—	—	—	—	—	—	—
Contributing to/J.D.A.	—	4	1	5	1	—	11

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child						
	Boyfriend	Girlfriend	Personal Friend	Family Friend	Neighbour	Acquaintance	Total
Rape	7	—	34	17	9	83	150
Attempted rape	5	—	2	4	5	12	28
Intercourse with female under age 14	16	1	7	3	2	23	52
Intercourse with female age 14 but under 16	29	—	5	4	1	19	58
Intercourse with feeble-minded	—	—	—	—	—	1	1
Indecent assault female	18	2	70	107	195	395	787
Indecent assault male	2	—	35	34	65	127	263
Incest	—	—	—	—	—	—	—
Seduction of female ward	—	—	—	—	—	—	—
Buggery	3	—	1	5	3	22	34
Gross indecency	3	—	4	14	18	43	82
Indecent act	—	—	4	5	62	33	104
Corrupting a child	—	—	—	—	—	—	—
Contributing to/J.D.A.	22	—	16	9	10	67	124

National Police Force Survey.





- With respect to the offence of buggery (sexual intercourse *per anum* by a male on a male or female) and gross indecency, the offender was much more likely to be known to the young person than not. For the offences of buggery, in 52 of the 68 occurrences the young person knew or was acquainted with the offender; for the offences of gross indecency, the offender was known to or acquainted with the young person in 172 of the 247 documented occurrences.
- The offences of “indecent act”, which almost exclusively are acts of genital exposure by males, were committed by strangers in 94.1 per cent of the occurrences.
- The charge of “contributing to juvenile delinquency” was relatively seldom laid by the police. This offence constituted 3.1 per cent of the 6,586 offences listed. Where this offence was listed, it was used much more often where the offender was known to the young person than otherwise.
- Twenty-nine step-fathers were listed in relation to the “unlawful sexual intercourse” offences, and only six in relation to the specific offence of sexual intercourse with one’s step-daughter. A probable explanation for this is the fact that, under the law as it existed when the findings were collected, the “unlawful sexual intercourse” offences did not require corroboration as a matter of law, whereas the offence of sexual intercourse with one’s step-daughter was attended by a statutory corroboration requirement.
- In 84 offences, the offender was listed as being the common-law parent of the victim. Although much smaller in absolute terms than the number of offenders who were fathers, this in no way implies that the relative risk posed by male common-law parents is less than that posed by biological fathers.
- The extent to which young persons are at risk from family friends and neighbours is noteworthy; virtually every serious sexual offence is represented by persons in these categories.

Excluding offences of indecent act, almost one in four (24.2 per cent) of the sexual offences against young persons was committed by persons either prominent in the child’s life or to whom the child was particularly vulnerable; about three in five (59.1 per cent) were committed by persons whom the child

Type of Association between Victim and Suspected Offender	All Offences	Excluding Offences of “Indecent Act”
	Per Cent	Per Cent
Offender was Family Member, Guardian or in a Position of Trust with respect to the child	16.8	24.2
Offender was a Friend or Acquaintance of the child	25.6	34.9
Other/Stranger	56.6	39.6
Not Reported	1.0	1.3
TOTAL	100.0	100.0

either knew or was acquainted with. Other persons and strangers accounted for about two in five (39.6 per cent) of the sexual offences which involved a sexual touching of some sort.

## Sexual Acts by Type of Association

Since several sexual acts may have been committed upon or with a child, the total number of sexual acts listed in Table 25.19 exceeds the number of children and youths (6203) about whom information was obtained in the National Police Force Survey. The findings presented in Table 25.19 indicate that, apart from the acts of exposure ("suspect exposed genitalia"), the most prevalent sexual acts committed were the fondling of the child's genitalia and the fondling of the child's breasts or buttocks (1886 acts and 1580 acts, respectively). Sexual intercourse between a male offender and a female complainant was the next most prevalent sexual act committed (681 acts). What is conspicuous from these findings is the sheer heterogeneity of the sexual behaviours committed against children and youths. In relation to these findings, the following trends are noteworthy:

- The sexual acts committed by offenders in an incest relationship with respect to their victims covered a wide range, over and above the specific acts of sexual intercourse and attempted sexual intercourse. By definition, however, the offence of incest in Canadian criminal law refers only to acts of sexual intercourse between persons closely related by blood.
- Acts of sexual intercourse and attempted sexual intercourse by a male with a female constituted about one in 10 of the total number of sexual acts committed.
- The majority of acts of genital exposure were committed by persons in the "other/stranger" category.
- With respect to acts of sexual intercourse, 13.7 per cent were committed by offenders (predominantly fathers) who were within the degrees of consanguinity specified by the incest offence in section 150 of the *Criminal Code*.
- If offenders in the incest relationship are grouped with those who were otherwise related by blood, family members, guardians, and persons in a position of trust vis-a-vis the young person, then this group accounted for 28.5 per cent of all acts of sexual intercourse. Offenders who were friends or acquaintances of their female victims accounted for 39.4 per cent of acts of sexual intercourse, while persons in the "other/stranger" category accounted for 32.1 per cent of these acts.
- Accordingly, well over a quarter (28.5 per cent) of the acts of sexual intercourse were perpetrated by offenders to whom the young person was particularly vulnerable, and almost seven in 10 (67.9 per cent) of these acts were perpetrated by offenders whom the young person knew or was acquainted with.

**In relation to more serious sexual acts, a young person is at risk from persons prominent in his or her life (for example, his or her father, uncle, guardian, or common-law parent) to almost as great an extent as from strangers.**

# Sexual Acts Committed against Children under Age 21 by Type of Association with Suspected Offender

Type of Sexual Act Committed Against the Child	Person Committing Offences Against the Child							Total
	Incest Relationship	Other Blood Relative	Guardian-ship Position	Other Family Member	Position of Trust	Friends/ Acquain- tances	Others/ Strangers	
Fondling breasts/buttocks	137	36	104	40	32	485	746	1580
Fondling genitalia	176	69	94	60	88	663	736	1886
Kissing mouth/other parts	61	19	36	21	13	255	213	618
Thigh intercourse	19	13	7	7	3	44	26	119
Oral/genital	51	19	28	23	30	173	121	445
Oral/anal	2	—	—	2	3	11	17	35
Attempted vaginal penetration with penis	40	18	10	8	13	78	72	239
Vaginal penetration with penis	93	24	44	25	8	268	219	681
Vaginal penetration with finger	40	16	21	10	15	70	47	219
Vaginal penetration with object	5	1	3	—	3	8	4	24
Attempted anal penetration with penis	8	4	3	1	5	35	22	78
Anal penetration with penis	8	3	6	2	2	40	26	87
Anal penetration with finger	5	4	2	3	2	9	13	38
Anal penetration with object	2	—	1	1	—	4	7	15
Bestiality	—	—	—	—	—	—	2	2
Exposed genitalia	38	19	23	15	25	214	1992	2326
Exposed nude body	39	8	16	10	6	90	209	378
Suspect aided another person	2	—	1	1	—	17	9	30
Suspect removed child's clothes	25	17	15	5	10	112	179	363
TOTAL	751	270	414	234	258	2576	4660	9163



Persons Committing Sexual Act	All Sexual Acts	"Serious" Sexual Acts
	Per Cent	Per Cent
Family Members, Guardians, or persons in Position of Trust	21.0	30.7
Friends/Acquaintances	28.1	36.6
Other persons/strangers	50.9	32.7
TOTAL	100.0	100.0

Since offenders in the former category have greater opportunity to abuse sexually young persons in their charge and, correspondingly, are persons to whom these children are particularly vulnerable, the Committee believes that the criminal law must be strengthened to afford a more important deterrent role in this context.

## Ages of Victims by Type of Association

The analysis of the social or legal relationships between offenders and victims as a function of the ages of the victims provides important insights into the question: To what extent are young persons of different ages variously at risk from persons to whom they are legally or socially related? The findings given in Table 25.20 provide a breakdown of the types of association between offenders and victims in terms of the ages of the victims. The findings indicate that:

- With respect to offences in which the offender was within the degrees of consanguinity specified in the incest offence in section 150 of the *Criminal Code*, this occurred proportionately more often where the victim was under 16 than where he or she was 16 or older. Over a third of these offences (35.8 per cent) concerned children under the age of 12, and more than half (51.7 per cent) concerned children 12-15 years of age. Only about one in eight offences (12.3 per cent) in which the offender was within the "incest" relation concerned young persons in the 16-20 year age-group.
- An even more marked trend was evident with respect to offenders in the category, "other blood relative". Almost three-quarters (72.2 per cent) of offences by other blood relatives concerned children under the age of 12; 96.2 per cent concerned children under the age of 16. Offences by other blood relatives of victims 16 and older constituted less than one in 26 (3.8 per cent) of all offences committed by this group. Similar trends occurred with respect to offenders in the "guardianship" and "other family member" categories.
- Offences committed by persons in a position of trust to the child occurred most often with respect to children under the age of 12; about six in seven of all offences committed by such persons concerned a child 11 years of age

Table 25.20

## Ages of Sexually Assaulted Victims by Type of Association with Suspected Offender

Age of Victim	Type of Association													
	Incest Relationship		Other Blood Relative		Guardianship Position		Other Family Member		Position of Trust		Friends/Acquaintances		Others Strangers	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Under age 7	36	11.4	52	39.1	6	3.4	12	11.3	89	53.3	270	20.9	196	11.1
7 — 11 years	77	24.4	44	33.1	28	15.9	32	30.2	55	32.9	349	27.1	386	21.9
12 — 13 years	59	18.7	12	9.0	32	18.2	20	18.9	10	6.0	204	15.8	212	12.0
14 — 15 years	104	33.0	20	15.0	67	38.1	30	28.3	5	3.0	274	21.3	339	19.2
16 — 17 years	31	9.8	2	1.5	33	18.7	8	7.5	3	1.8	81	6.3	266	15.1
18 — 20 years	8	2.5	3	2.3	10	5.7	4	3.8	5	3.0	111	8.6	363	20.6
TOTAL	315	99.8*	133	100.0	176	100.0	106	100.0	167	100.0	1289	100.0	1762	99.9*
														100.0

National Police Force Survey. All children and youths under age 21 who were sexually assaulted (excluding 2060 acts of exposure). Information missing for 195 cases.

\*Rounding error.

or younger (86.2 per cent). This dropped off sharply with respect to young persons 12 and older.

- Offences committed by friends or acquaintances of the child also occurred proportionately more often where the child was 11 or younger (48.0 per cent). These persons became much less a factor in relation to victims in the 16-20 age-group.
- The proportion of offences committed by persons in the "other/stranger" category varies appreciably from one age group to another, from a low of 11.1 per cent in relation to victims under age seven to a high of 21.9 per cent in relation to victims between seven and 11 years-old.

The findings clearly show that, in general, young persons were proportionally at greater risk from blood relatives and persons in positions of trust than from other persons. With respect to children 11 years or younger, the proportion in each of these categories is striking:

- 86.2 per cent of all offences committed by persons in a position of trust relative to the child victim concerned children 11 years-old or younger;
- 72.2 per cent of all offences committed by other blood relatives of victims (excluding incest relations) concerned children 11 years-old or younger; and
- 35.8 per cent of all offences committed by persons in an incest relation with respect to the child victim concerned children 11 years-old or younger.

The findings indicate that young children are at greatest risk from persons prominent in their lives, whether they be blood relations, family members or persons in positions of trust (for example, baby-sitters and teachers). In other words, young children are proportionately at greatest risk of sexual abuse from persons to whom they are socially most vulnerable.

## Co-residence of Victims and Offenders

The Committee's findings in respect to whether the offender resided in the same household as the victim at the time of the offence strengthen and complement the other analyses undertaken to determine the persons from whom children are at greatest risk from sexual abuse. Overall, in about one in five cases of sexual assault (19.8 per cent) investigated by the police, the victim and the suspected offender lived, shared or were present in the same residence. Girls were over twice as likely (20.8 per cent) to be victims of these types of offences as boys (9.7 per cent).

Of those offences in which the offender and the victim co-resided, in more than one in three (36.1 per cent) the offender was related to the victim within the degrees of consanguinity specified in the incest offence in section 150 of the *Criminal Code*. Other blood relatives accounted for about one in 13 (7.4 per cent) of these offences, and other family members for about one in nine (10.6 per cent). In descending order, the balance of these "co-resident" offences was accounted for by persons in guardianship positions (15.7 per cent); friends or acquaintances of the victim (14.8 per cent); other persons and strangers (13.1 per cent); and persons in positions of trust vis-a-vis the victim (2.2 per cent).



Table 25.21

## Co-residence of Victim and Offender by Type of Association

Type of Association between Offenders and Victims	Number of Offences in which Offender and Victim Co-resided	Per Cent
<i>Incest Relationship</i>		
• father	244	
• mother	3	
• brother	27	
• half-brother	10	
• sister	1	
• half-sister	—	
• grandfather	12	
• grandmother	—	
TOTAL	297	36.1
<i>Other Blood Relatives</i>		
• uncle	50	
• aunt	—	
• nephew	1	
• niece	—	
• cousin	10	
TOTAL	61	7.4
<i>Other Family Members</i>		
• adoptive father	12	
• adoptive brother	2	
• adoptive grandfather	1	
• foster brother	1	
• common-law parent	59	
• other	12	
TOTAL	87	10.6
<i>Guardianship Positions</i>		
• step-father	116	
• foster-father	10	
• legal guardian	1	
• employer	2	
TOTAL	129	15.7
<i>Positions of Trust</i>		
• day care worker	—	
• teacher	1	
• youth worker	6	
• group home worker	2	
• baby-sitter	9	
TOTAL	18	2.2

Table 25.21 (continued)

## Co-residence of Victim and Offender by Type of Association

Type of Association between Offenders and Victims	Number of Offences in which Offender and Victim Co-resided	Per Cent
<i>Friends/Acquaintances</i>		
• boyfriend	12	
• personal friend	15	
• family friend	52	
• neighbour	5	
• acquaintance	38	
TOTAL	122	14.8
<i>Others/Strangers</i>		
• boarder	32	
• co-resident of group home	2	
• other	57	
• stranger	17	
TOTAL	108	13.1
GRAND TOTAL	822	99.9*

National Police Force Survey.

\*Rounding error

Findings on the offences in which offenders and victims co-resided are presented in Table 25.22 in relation to the dimensions of the types of association between them and the ages of the victims. What is apparent from these findings is that children under 16 were proportionately at greater risk from persons with whom they resided than were young persons 16 and older. About seven in eight of these offences (86.8 per cent) concerned a child 15 years of age or younger, while only about one in eight (13.2 per cent) concerned a young person 16 or older. Children under the age of 12 were particularly at risk from blood relatives and persons in positions of trust. The highest proportion of "co-resident offences" occurred in relation to children 14 and 15 years of age (30.3 per cent of the total); the next highest proportions of these offences occurred in relation to children 7-11 years of age (25.8 per cent of the total), children 12 and 13 years of age (18.0 per cent of the total), and children under seven years of age (12.7 per cent of the total).

**Table 25.22**  
**Victims and Suspected Offenders Living in the Same Residence by Type of Association and Age of Victim**

Age of Victim	Type of Association											
	Incest Relationship		Other Blood Relative		Other Family Member		Guardianship Position		Position of Trust		Friends/Acquaintances	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Under Age 7	29	10.3	22	36.1	13	15.1	6	4.6	7	38.9	18	14.7
7 — 11 years	63	21.7	24	39.3	22	25.6	27	20.9	6	33.3	33	27.0
12 — 13 years	57	19.7	4	6.5	15	17.4	25	19.4	1	5.6	20	16.4
14 — 15 years	104	36.0	9	14.8	27	31.4	46	35.7	1	5.6	34	27.9
16 — 17 years	28	9.6	2	3.3	8	9.3	20	15.5	3	16.6	4	3.3
18 — 20 years	8	2.7	—	—	1	1.2	5	3.9	—	—	13	10.7
TOTAL	289	100.0	61	100.0	86	100.0	129	100.0	18	100.0	122	100.0
											61	99.9*
											766	100.0

*National Police Force Survey.* Information missing for 56 cases.

\*rounding error



## Summary

1. Victims were more likely to be threatened or forced by offenders less than three years older than they than by offenders either younger than or more than three years older than their victims.
2. Proportionately, more resistance was offered by victims to younger offenders than to offenders more than three years older than their victims.
3. There were no appreciable differences in the nature of the sexual acts committed by offenders either younger, about the same age, or more than three years older than their victims.
4. In reported occurrences involving a single offence, an average of 1.5 sexual acts had been committed against the victim.
5. In about one in seven cases (14.5 per cent), the victim had been induced or forced to perform sexual acts on the offender. Acts of these kind tended to occur more frequently where the offender was well known to the child or held a position of trust to the child.
6. In the vast majority of sexual offences against the child, either the young person was unable to give a legal consent to sexual behaviour, or in the case of older children, resisted the behaviour in question.

A low proportion of victims (females, 6.1 per cent; males 15.2 per cent) was reported to have "participated willingly" in the sexual act. In the case of male victims in the 14-20 age group, only about one in six (16.8 per cent) was reported to have participated willingly.

7. Excluding offences of indecent act, almost one in four (24.2 per cent) of the sexual offences was committed by persons either prominent in the child's life or to whom the child was particularly vulnerable. Overall, about three in five offences (59.1 per cent) were committed by persons whom the child either knew or was acquainted with.
8. When the less serious sexual acts involving fondling, kissing, thigh intercourse and exposures are excluded, then proportionately the more serious sexual acts were more likely to have been committed by a person whom the child knew or was acquainted with than by a stranger.

Part V

Child Protection Services





## Chapter 26

# The Child in Need of Protection

The organization of child protection services across Canada ranges from loosely affiliated local or regional children's aid societies to centrally administered services. The distinctive features of each approach evolved from historical precedents that reflected local needs and different philosophies about social policy, about which level of government, municipal or provincial, should assume these responsibilities, and about whether private or public initiative was required to achieve these purposes. Fact-finding on the provision of child protection services in Canada is compounded by the operation of 12 separate jurisdictions (provinces and territories), each with its own child welfare statutes and service programs. There is no listing for the country along uniform lines of the full range of services provided. When the Committee started its review, it found that there was no common definition of child sexual abuse, little documentation of the child protection services provided for sexually assaulted children and no information about whether these services effectively assisted children. There is no documentation for Canada that compares how the sharply different programs which exist may influence the care and protection of sexually assaulted children.

Since the legal jurisdiction for child protection services is a provincial responsibility, and for this reason lay beyond the scope of its mandate, the Committee's review was limited to a consideration of how the organization and operation of these services affect the application and adequacy of protection afforded by the sexual offences in the *Criminal Code*.

In undertaking its review, the Committee received indispensable and effective co-operation from child protection services in all provinces and the Yukon. The extent of this participation in a federally appointed study underscores the nature of the deeply held concerns of child protection administrators and workers in all parts of Canada about the need to understand better the complex dimensions of child sexual abuse and about how these children can be better protected and served. The Committee knows of no precedent where collaborative research along these lines involving provincial child protection services has been undertaken in this country.

In this chapter, a review is given of the statutory definitions of the child in need of protection, the development of the National Child Protection Survey is described and the operation of a number of special service programs is outlined. The issues considered in the remaining chapters in this section of the Report deal with:

1. A review of legislation in relation to the duty to report cases of child sexual abuse. Research findings are given concerning the extent to which cases were reported to registers and the types of cases for which notification was made.
2. The provision of child protection services for sexually abused children documented on the basis of findings assembled by the National Child Protection Survey.
3. A review of research findings concerning the services provided by philosophically different intervention strategies — the child-centred and family-centred approaches — in relation to the protection and assistance afforded by these means for sexually abused children.

## Provincial Statutory Definitions

The definition in each provincial Act of “a child in need of protection” establishes the range of situations in which a child may be eligible to receive services from child protection services, and in which these agencies are authorized to intervene in the affairs of the child and his family. Table 26.1 sets out the major elements of risk that accumulatively constitute the definition of a child in need of protection for the purposes of each statute.<sup>1</sup> Categories having equivalent or analogous meanings are grouped together in this synopsis.

In the provincial acts, the concept of “a child in need of protection” is so broadly defined as to render virtually any child living in unsatisfactory domestic conditions or subjected to any form of abuse or neglect, eligible to receive protective services. Each definition contains an “umbrella” category that encompasses an enormous range of situations (e.g., “child living in unfit or improper place/circumstances”; “child whose life, health, morals/emotional well-being may be endangered by the conduct of the person in whose charge the child is”; and “child subjected to abuse”). These broad categories also incorporate concepts such as “morals”, “emotional well-being”, “unfit”, “improper” and “abuse”.

The definitions of “a child in need of protection” appear to have been drafted to ensure that, in any conceivable case of child abuse or neglect, there would be some statutory basis for the authorization of intervention. Such legislation confers wide discretionary powers on those persons who must apply the statutes. Protection is afforded families, however, in their right to contest in

Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child who is the victim of sexual assault/exploitation or who is subject to physical ill-treatment through violence and neglect.	X	X		X	X							
Child brought with consent of person in whose charge he is before a court to be dealt with under the act.	X					X	X		X		X	X
Child born to unmarried parents whose mother is unable or unwilling to care for him/delivers him for adoption.		X					X					
Child who refuses or is unable to provide properly and adequately for the health and welfare needs of herself or her child.		X					X					
A child who without sufficient cause is habitually absent from home/school	X	X	X	X		X			X			
Child absent from home in circumstances that endanger his safety or well-being.										X		



Table 26.1 (continued)

Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child who leaves a hospital centre or reception centre or foster family without authorization.					X							
Child who leaves/is absent from his home/parents without authorization.		X			X							
Child found begging or receiving charity in a public place.						X			X			
Child forced or induced to beg or do work disproportionate to his strength or to perform for the public in a manner that is unacceptable for his age.		X			X							X
Child committed pursuant to S.20(1) (h) or (i) of the Juvenile Delinquents Act.			X									
Child who, with the consent or connivance of the person in whose charge he is, commits any act that renders him liable to a penalty under any Act of Parliament, or of the Legislature, or under any Municipal By-Law/Child who commits an offence.				X					X			X

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child where the person in whose charge the child is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for the child's health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or who otherwise fails to protect the child adequately.	X	X	X	X		X	X	X	X	X		X
Child for whom the person in whose custody he is neglects, refuses or is unable to provide the services and assistance needed by the child because of the child's physical, mental or emotional handicap or disability.		X										
Child deserted/abandoned by the person having charge of the child.			X	X		X	X	X	X	X	X	X
Child where the person having charge of the child cannot for any reason care properly for the child/or where that person has died and there is no suitable person to care for the child.	X				X	X	X		X	X	X	X

Table 26.1 (continued)

## Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child where the person having charge of the child omits to/is unable to control the child/child has serious behaviour disturbances.	X	X		X	X	X	X	X	X			X
Child abused or neglected so that his life/safety or health/well-being is endangered.			X						X	X		
Child deprived of/lacking the material conditions of life appropriate to his needs and to the resources of his family/family is unfit, unwilling or unable to care for him.	X	X	X	X	X		X					
Child whose behaviour, condition, environment or association is injurious to himself or others.	X	X		X			X					
Child subjected to abuse.							X					
Child whose mental or emotional health is threatened by the isolation in which he is maintained.					X							
Child living in a situation where there is severe domestic violence.	X	X		X								



**Table 26.1 (concluded)**  
**Provincial Statutory Definitions of the Child in Need of Protection**

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child whose life, health, morals/emotional well-being may be endangered by the conduct of the person in whose care the child is.		X		X	X	X	X	X	X			
Child whose emotional or mental development is endangered because of emotional rejection or deprivation of affection/guidance/discipline by the person having charge of the child.		X				X	X		X			X
Child living in unfit or improper place/circumstances.	X		X	X		X		X	X		X	X
Child found associating with an unfit or improper person.						X			X			X

court any action taken by child protection agencies. Recognition is given to the individual and the unique nature of each family's difficulties since child protection workers may assess all aspects of a family's situation rather than checking for a specific range of prohibited behaviours before directly intervening in the life of a family and the child.

In the definitions of "children in need of protection", sexual abuse receives no statutory identification as a separate kind of risk faced by children, and against which they require protection. Four provincial Acts — those of Newfoundland, Prince Edward Island, New Brunswick and Quebec — cite sexual abuse as part of the definition of "a child in need of protection". In these Acts, however, sexual abuse is not treated as a separate category of harm or danger. Rather, sexual abuse or exploitation is grouped together in these Acts with other forms of abuse, such as physical abuse, physical or emotional neglect, or threatening behaviour.

In the eight jurisdictions where no mention is made of sexual abuse in the definition of children requiring protection, authorization to intervene on behalf of the sexually abused child must be inferred from one of the broad "umbrella" categories of risk (e.g., "child whose life, health, morals/emotional well-being may be endangered by the conduct of the person in whose care the child is").

In provincial child welfare statutes, the range of measures authorized to be taken on behalf of any child deemed to be in need of protection is identical whether the child has been battered, neglected, abandoned, permitted to be absent from school or sodomized. The statutes do not state explicitly that it is part of the mandate of the child caring agencies to protect sexually abused children. The exception is the Quebec Act, s. 23(j) which authorizes Le Comité de la protection de la jeunesse to "promote the protection of children who are the victims of sexual assault or who are subject to physical ill-treatment through violence or neglect."<sup>2</sup>

**On the basis of its review, the Committee concludes that the majority of provincial legislatures have not given specific consideration to child sexual abuse in framing their child welfare legislation. Although, the statutes of Prince Edward Island, Quebec, Manitoba, Saskatchewan, Alberta, the Yukon and the Northwest Territories create summary conviction offences for anyone who neglects, abandons, ill-treats or abuses a child in his or her care, none expressly makes an offence of child sexual abuse.**

**The provincial statutes are of little value in terms of providing any real guidance, or practical assistance to officials responsible for child care and protection, or in specifying clearly the basis upon which decisions are to be made whether incidents of child sexual abuse are to be dealt with under the terms of**

child protection legislation or under the sexual offences in the *Criminal Code*. On the basis of the findings given in the following chapters in this section of the Report, the Committee concluded that it is the organization of services not the specific wording of any particular provincial statute, that affects the provision of assistance to sexually abused children. In this regard, sharply contrasting approaches have evolved in the administration and operation of different child protection services which have markedly different consequences in relation to affording assistance and protection for sexually abused children.

The Committee reviewed extensively whether the statutory authority under which child protection services function should specify child physical and sexual abusive investigation responsibility in addition to the broad concepts of neglect and protection. As documented in this Report, **there can be no doubt that more adequate investigation of cases of child sexual abuse is required. The clear specification of the types of investigative responsibility for physical and child sexual abuse would accord with and promote the changing mandate responsive to public expectations.** Accordingly, on the basis of the findings presented concerning the provision of child protection services, **the Committee recommends that this is an issue requiring full review and, if deemed appropriate, action at the provincial level.** Because the investigative practices followed have crucial and profound consequences for the protection and well-being of physically and sexually abused children, the Committee believes that these matters should not be left solely to well intentioned but variable discretion, but that the basic principles and social policies involved warrant specification in legislation.

## Development of National Survey

As it started its review, the Committee was told by a number of experienced case workers that the records of child protection services were an inappropriate source to draw upon to document the experience of sexually abused children and the services provided for them. It was reported that most case records were incomplete, that there was no uniform definition of child sexual abuse, and that social workers were too busy to provide information by means of a standard protocol. The Committee was also bluntly told in some instances that the needs of these children were already well known and that more resources, not research, were needed. One senior official characterized the findings that might be obtained as “totally irrelevant” and was also concerned that the results might spark a “backlash of strong criticism” from the media and the public. The concerns that a national survey could not be undertaken were unfounded.

The Committee inquired of all provincial child protection services about the feasibility of undertaking a survey of services provided to sexually abused children. Collaborative research was initially started in three provinces, and subsequently, all provinces joined the study which became a National Child Protection Survey of Child Sexual Abuse.



Basic information for certain items was obtained in all jurisdictions. The survey relied on three sources of information. These were: the findings obtained by means of the child protection research protocol on child sexual abuse in eight provinces and the Yukon; an adaptation of the Committee's research protocol used in a province-wide sampling of cases known to child protection workers undertaken by Le Comité de la protection de la jeunesse in Quebec; and information obtained by means of an abbreviated protocol from cases listed in the Child Abuse Registry maintained by the Ontario Ministry of Community and Social Services. In the case of the survey conducted in Quebec, half of the items used in the research protocol corresponded to questions listed in the survey undertaken in eight other provinces. None of the 51 Children's Aid Societies in Ontario found it feasible to participate directly in the survey. However, with the full co-operation of the Ontario Ministry of Community and Social Services, information was drawn from the provincial Child Abuse Registry.

In order to provide the broadest coverage possible of the findings from the three sources, information from each of the surveys was combined, wherever this proved to be feasible. When the findings are referred to, the following code is used.

A — findings from all sources

B — findings for eight provinces, Quebec and the Yukon

C — findings from eight provinces, the Yukon and Ontario

National Child Protection Survey — findings from eight provinces and the Yukon.

The Committee acknowledges the participation in the survey of:

- Newfoundland Department of Social Services
- Prince Edward Island Department of Health and Social Services
- Nova Scotia Family and Child Welfare Association
- New Brunswick Department of Social Services
- Le Comité de la protection de la jeunesse (Quebec)
- Ontario Ministry of Community and Social Services
- The Children's Aid Society of Winnipeg and the Winnipeg Regional Office, Manitoba Department of Community Services and Corrections
- Saskatchewan Department of Social Services
- Alberta Department of Social Services and Community Health
- British Columbia Ministry of Human Resources
- Yukon Department of Health and Human Resources

Unlike the findings obtained in the Committee's national surveys of police forces and hospitals where in each instance information was obtained about all cases known to participating programs, the findings assembled in the National Child Protection Survey varied with respect to whether all, a sample, or a

selected number of cases known to child protection workers were documented. All known cases were included in the surveys undertaken in four provinces. In one province, Quebec, a sample was drawn of cases known to child protection workers in all parts of the province. Elsewhere, cases were included representing specific rural and urban regions of a province. As a result of how these findings were obtained, overall, they do not constitute a sample but rather a sizeable number of cases (totalling 1418) of young victims assisted by child protection services in all parts of Canada.

In most instances, child protection workers were asked to review cases known to them, and on this basis, to complete the research protocols themselves or with assistance from a researcher. In a few provinces, records were the initial source of information, and in these instances, the findings were reviewed for completeness by the professional staff of the agencies.

Despite the limitations noted, what is unusual about the findings obtained by the Committee is the size of the group of children whose experience was documented, the detailed nature of much of the information obtained, and the fact that findings were assembled from all provinces and the Yukon. Until more complete information is available along these lines, the Committee accepts the findings of the National Child Protection Survey as the basis for reaching its conclusions concerning the provision of child protection services for sexually abused children.

Before presenting findings from the National Child Protection Survey which dealt with the experience of services provided by officially authorized agencies, a synopsis is given of the operation of a number of special community programs established in different parts of the country.

## Special Community and Social Services

In the course of its review, the Committee learned of a number of innovative programs that had been developed for sexually abused children. What is striking about these programs is their breadth and diversity. In some instances, these activities are subsumed within general child protection services, while in other cases, such initiatives have come directly from the community to serve these children. The examples given here illustrate trends that are emerging across Canada.

### Associations of Victims

In several regions of Canada, groups or associations have been formed to help victims of sexual assaults, to provide counselling and to recommend the better provision of services. An example of such an association is the Sexual Abuse Victims Anonymous Association (S.A.V.A.) of British Columbia based in Campbell River. This voluntary community association, whose members are former incest victims, documents incest cases, offers peer counselling, makes

referrals and mounts public education programs (e.g., workshops, media programs and personal safety courses for children in schools). S.A.V.A.'s therapy sessions are designed to overcome incest-related trauma and to work towards the long-term rehabilitation of incest victims through the use of cathartic techniques that foster self-awareness, improve self-esteem and break down harmful rationalization on the part of the victim. Written assignments are used to assist the victim in coming to terms with having been sexually abused.

Where incestuous behaviour still occurs, the program aims at breaking down the offender's position of dominance within the family; support and advocacy are provided to victims as an encouragement to lay charges. S.A.V.A. members accompany victims to court in order to provide moral support and assistance. Where members are suicidal or severely depressed, formal contracts are used which bind them to contact other members before attempting desperate actions.

Another example of such an association is the Parents Anonymous group established in 1978 by the Social Services Council for Greater Saint John. The members of Parents Anonymous maintain a 24 hour telephone service providing counselling to parents under stress who fear that they may mistreat their children as an outlet for their anxieties. Parents Anonymous also sponsors "Parents Helping Parents" meetings offering peer support to troubled parents.

The sharp increase in the number of associations of victims from coast to coast indicates that some sexually assaulted persons seek assistance from persons who themselves may have been victims of sexual offences. Several of these groups have been established in liaison with public services and receive either input from professional staff or public funding for some of their activities.

## Advocacy Groups

In several provinces, associations have been formed to represent the interests of children and to serve as advocates for their better protection. The Saskatchewan Society for the Prevention of Cruelty to Children is an organization seeking to create a province-wide outlet for the involvement of concerned citizens in providing for the well-being of children. The S.S.P.C.C. has provided advocacy for children in courts and before various official bodies, has championed the cause of children in the media, has promoted professional and public awareness of all forms of child mistreatment and has sponsored Parents Anonymous groups. The organization has also produced materials for public and professional use and a bi-weekly newsletter. In 1982, the Society convened a conference that considered all aspects of the care of sexually abused children.

In Ontario, Justice for Children is a non-profit organization which seeks to advance the cause of child-oriented law-reform. One of the organization's concerns is with the legal issues surrounding incestuous assault. The group also provides a public information service dealing with issues that affect children.



## Sexual Assault Centres

Rape crisis centres (subsequently retitled sexual assault centres) were initially opened in Vancouver and Toronto in 1974. Since then, approximately 50 have been established across Canada. Some centres are located in hospitals or women's centres, while others operate independently. Most of the centres are staffed by volunteers whose work in some instances is complemented by paid professional staff.

The major function of the sexual assault centres is to provide immediate and direct assistance to victims. Several national conferences have been held and a National Association has been established whose functions include: assistance to new centres; collection of national statistics on sexual assault; service as a national information clearinghouse; training volunteers; preparation of briefs related to law reform; and production of handbooks on child sexual abuse.

Several centres have mounted services specifically intended for sexually abused children. An instance of this is the program developed by the Sexual Assault Centre of Edmonton. The Centre's services include: a paediatric examination; a social work assessment; psychological testing; and a psychiatric assessment (where required). The Centre's procedures involve setting up for sexually abused children and their families treatment plans that may entail: family counselling; teaching appropriate parental expectations and attitudes; psychotherapy; play therapy; and other types of treatment deemed necessary. In addition to providing a range of counselling, a telephone hotline, and support services, the Edmonton Centre publishes a series of leaflets concerning sexual offences against children.

The Coalition of British Columbia Sexual Assault Centres has sponsored the formation of Taking Responsible Action for Children and Youth (T.R.A.C.Y.). Among T.R.A.C.Y.'s anti-child abuse activities is a "block parents" training program. T.R.A.C.Y. also conducts child abuse-related workshops for teachers and social workers. The agency's Preventive Education Task Force provides seminars for school children between kindergarten and third grade. The seminars familiarize children with different kinds of touching; they inform children that certain sorts of touching are inappropriate, that their bodies are their own and that they do not have to accept being touched by adults in these ways. Similar seminars are being held elsewhere in the country.

## Telephone Hotlines

An abiding dilemma for child protection services is how to be accessible and to reach out quickly and effectively to abused children. An unusual outreach program that was established in 1979 by the British Columbia Ministry of Human Resources consists of a province-wide, 24 hour telephone service that receives reports of child neglect, abuse and other crises. Calls received between 8:30 a.m. and 4:30 p.m. are routed to the nearest appropriate offices

of the Ministry; during off-hours, the calls are directed automatically to the Vancouver Emergency Services Unit which has a staff of 60 crisis intervention workers and maintains liaison with the police. The Zenith Hotline is staffed by workers from the Ministry's Family Team and Youth Team. The Family Team is responsible for responding to all child welfare emergencies and adult or family crises, while the focus of the Youth Team is on troubled teenagers.

The goal of the Zenith Hotline is to reach into the community and find those victims whom the child protection system may otherwise fail to identify. The urgency of each call is assessed and calls are then referred on to the most suitable local agency or resource.

The Zenith Hotline operates as a comprehensive referral system designed to put victims and their families in contact with the most appropriate services and agencies with a minimum of red tape and delay, and to assure that follow-up and immediate investigation take place in cases of serious abuse and neglect. Its purpose is to complement the routine work of the Ministry's child protection workers. Following the precedent established by British Columbia, some other provinces have established their own hotlines.

## Co-ordinating Committees

The 1971 Report on *Child Abuse in Nova Scotia* noted that while there was insufficient co-ordination between related services, there was a strong and growing recognition that interdisciplinary co-operation was required to deal effectively with these problems.<sup>3</sup> During the intervening years, co-ordinating committees concerned with child abuse have been established in all parts of the country, most commonly, in larger urban centres. The Committee learned of the operation of a number of informal liaison groups in smaller communities which consisted of child protection workers, the police, physicians, and other lay and professional groups. In these instances, information about sexually abused children was shared between services and decisions were reached for care and appropriate follow-up.

In addition to these informal arrangements, several other means intended to co-ordinate services have evolved. These include: multidisciplinary service teams, reviewed elsewhere in the Report; and both locally and provincially established committees intended to co-ordinate child abuse services.

An example of a locally established co-ordinating committee is the Edmonton Committee on Child Abuse and Neglect. The Committee's members include representatives from: the Public School Board; the Separate School Board; Social Services; the Police Department; and Public Health Services. The activities of this Committee relate to: the co-ordination of resources; consultation; encouraging the development of a team approach to child abuse; fostering better communication between agencies that deal with the problem; and providing liaison with the Child Welfare Branch of the Alberta Department of Social Services and Community Health.



A somewhat comparable program has also been developed in Calgary. In conjunction with the Alberta Children's Hospital, the Calgary Child Sexual Abuse Committee was established as a result of a conference convened in 1980 to review how more effective care could be provided. Following this meeting, working sub-committees were set up (e.g., the Needs, Resources and Planning Sub-Committee whose seven members presented an extensive, provincially funded report in 1982 advocating the establishment of a specialized multidisciplinary core team to deal comprehensively with child sexual abuse in Calgary). In 1981, the Committee received funding from Alberta's Department of Social Services and Community Health to establish a Child Sexual Abuse Treatment Centre.

In other jurisdictions, provincial child protection services have established co-ordinating committees concerned with child abuse. For instance, Ontario has developed a large number of pilot projects, multidisciplinary bodies, educational activities and services focussing on child abuse. In 1981, 53 planning and co-ordinating groups concerned with child abuse were operating in 40 Ontario communities. Parents' Anonymous Groups had been formed in 17 areas; 48 interdisciplinary treatment or community access teams were functioning in 33 localities.

A somewhat different approach has been adopted in New Brunswick where the Department of Social Services has established a Community Committee Program in order to ensure that the expertise associated with multidisciplinary teams was made available to each area of the province. The purpose of each Committee is to act as an adjunct to the Department of Social Services in the detection, prevention and treatment of child abuse, and in educating the public about the problem. At least one Committee is formed in association with each of the Department of Social Services' six area offices. Each Committee is under the direction of the Area Administrator of Personal and Social Services responsible for the area office with which that particular Committee operates. The Area Administrator, in turn, reports to the Director of Personal Social Services on the activities of the Committee(s), and makes recommendations regarding its functions, effectiveness, composition, frequency of meetings and special areas of concern. The Committees draw their membership from a number of core disciplines.

The Committees are not involved in case management. However, they seek to assure that information concerning a probable need for services is brought to the attention of the proper investigating authority. The Committees have participated in active programs for encouraging teachers and other school personnel to report suspected cases of abuse; accordingly, materials for teachers have been published which outline the indicators of abuse, interviewing a child in order to gain verification and procedures for reporting the suspected abuse.



## Residential Facilities

As part of their provision of services for abused children, all provincial child protection services provide residential facilities for their temporary placement. Some of the facilities which include group homes, hostels and halfway houses have been developed specifically for the placement and treatment of such children. An example of this type of resource is the Mitchnick Group Home in Calgary, a small centre (accommodating up to six residents) which caters specifically to children with histories of neglect, abuse or sexual abuse. The children served by the facility range from 13 to 17 years of age. The Home's program features community exploration trips and in-house lessons on topics such as sex education.

Across Canada, a network of Transition Houses for physically and emotionally abused women has been established. Most of these houses were established by private societies and develop their own programs. One such group home, located in central Surrey in British Columbia, caters specifically to sexually abused girls. Another house is operated by the New Hope Therapeutic Society and has residents consisting exclusively of female incest victims. Recreational facilities are provided to make the resident's stay more pleasant and a daily routine is provided (e.g., school, household chores) in order to reinforce a home-like sense of normalcy. Weekly group therapy sessions are held for residents, as well as sessions for persons living outside the facility, including victims, perpetrators and family members.

## School Education Programs

The inclusion of sex education and family planning in the curriculum is a sensitive issue for school boards. Despite the difficulties faced in teaching such topics, a number of programs have been started across the country intended to provide parents and children with information about the signs of child abuse. A number of the programs initiated by local police forces deal with how children should react to various situations involving strangers.

Instances of two educational programs dealing more broadly with child abuse are ones in Vancouver and Saskatchewan. Since 1976, a high school education program has been run in the Lower Mainland under the joint sponsorship of the Junior League of Vancouver, the Ministry of Human Resources' Child Abuse Team and its Volunteer Services. The project was designed to supply students with information regarding abuse and the resources available to them and their parents.

The Saskatchewan Department of Social Services, recognizing that the province's schools constitute a potentially invaluable resource for the prevention and detection of child abuse, have encouraged them to adopt some of the following measures:

1. Offering parenthood, child care and family living courses.

2. Assigning a guidance counsellor or a teacher as a liaison, receiving and communicating reports of abuse to the appropriate social service in the community.
3. Promoting teacher awareness of the signs of child abuse.

The Saskatchewan Federation of Home and School Associations established a special child abuse project designed to improve the awareness of child abuse in the province among local Home and School Associations and members. The project has also encouraged the Association to create volunteer programs to educate parents about abuse.

## Professional Education Programs

Several provincial programs, such as the Division of Child Welfare of the Newfoundland Department of Social Services, have engaged in a variety of activities to educate professionals and the public about child abuse. In the Newfoundland program, seminars have been held across the province. Video presentations have been produced that offer information to parents, teachers and doctors on the prevention, detection and reporting of child abuse. The Division also has prepared and distributed a variety of pamphlets concerning issues related to child abuse.

In Nova Scotia, the Family and Child Welfare Division of the Department of Social Services has been active in developing an educational program focusing on child abuse. In 1979, an information kit was prepared and distributed to all schools, universities, public health units, police departments, hospitals and day care centres in the province, as well as to selected professionals involved with children, and clergy. The Department has co-sponsored a seven-part series of audio-visual presentations on "Violence in the Family". The series was broadcast on cable television community channels; one third of the programs concentrated specifically on sexual abuse. Other educational activities have included in-service workshops on child abuse for teachers and nurses.

The Saskatchewan Department of Social Services has sponsored a series of activities to improve public and professional education concerning child abuse, including a media campaign, and training programs for child protection workers, law enforcement personnel, teachers and health workers. The Department produces a booklet of Guidelines for the health professions to increase their detection and reporting of child abuse.

In Quebec, Le Comité de la protection de la jeunesse has prepared announcements about child sexual abuse for radio and television. One announcement noted that during the previous year about 1000 cases of child sexual abuse had been reported to child protection services. Listeners were told that they should report cases to the local Director of Youth Protection Services, or that they should encourage the victims to do this themselves.



Le Comité has also prepared a leaflet for sexually abused children which asks them to seek help from a trusted adult. Entitled *Les abus sexuels ça va mieux quand on en parle!*, the leaflet seeks to reassure the child that telling a teacher, doctor or child protection worker will not involve the breaking up of the child's family. A telephone number which can be called without charge is given in the leaflet.

## Standard Reporting Procedures

In recent years there has been a marked shift in the recognition of the need to establish guidelines for the reporting of cases of child abuse. Several provinces have issued such guidelines, and an example is provided by the Manitoba Department of Community Services and Corrections which has prepared a series of protocols on child abuse, its definition and detection, as well as a description of reporting procedures. A specialized protocol was developed for both the teaching and medical professions, while a general one was prepared for members of other professions. It was intended that these handbooks would instill the knowledge and motivation required to increase the professional reporting of child abuse. The protocols were drafted by the Provincial Advisory Committee on Child Abuse, an organization representing provincial and private social work agencies, health and law enforcement.

The development of general guidelines on child abuse is usually a first step towards establishing detailed procedures for professionals working with sexually abused children. Two such programs have been initiated in Ontario. In January, 1981, a standardized forensic sexual assault evidence kit was made available to hospitals across Ontario. The kit was developed by the Provincial Secretariat for Justice in conjunction with: the Ministry of Health; the Centre of Forensic Sciences; the Niagara Committee Against Rape and Sexual Assault; the police; Crown attorneys; rape crisis centres; and physicians. The kit incorporates a colour-coded, step-by-step set of procedural guidelines to assist hospital personnel in collecting and properly identifying evidence.

The Provincial Secretariat for Justice also distributes an instructional videotape intended to familiarize doctors and nurses with the proper use of the evidence kit and with the physical and emotional needs of victims. The evidence kit was created to foster a satisfactory standard of examination and testing for proof of sexual assault across the province. The new procedures were designed to assure that the analysis of evidence would be conducted at the facility possessing the greatest expertise and best resources for such purposes: the Centre of Forensic Sciences. Finally, the use of the kit was intended to guarantee that the medical proof assembled in each sexual abuse case complies with the rules and technicalities of the law concerning the admissibility and sufficiency of evidence. In 1983, a sexual assault evidence kit specifically designed to meet the needs of children and youths was being developed by the Secretariat.



## Research

Most service programs have not undertaken or published research concerning the identification of child sexual abuse and the provision of services to victims. The notable exceptions are: the surveys of sexual assaults by the Winnipeg Rape Crisis Centre and the Ontario Sexual Assault Centres; and the projects of the United Way of the Lower Mainland in British Columbia.

The most extensive research by any community association or provincial child protection service dealing with child abuse has been undertaken by Le Comité de la protection de la jeunesse in Quebec. Since its inception in the mid-1970s, Le Comité has completed several major investigations concerning the situation of sexually abused children, the harms incurred and the services provided on their behalf. These significant documents are unique for Canada in terms of their scope and their implications for how better protection might be afforded for sexually abused children. That they have been undertaken in conjunction with the ongoing provision of services underscores the feasibility and need for this type of collaboration. Such research may be critical of deficiencies which may otherwise not be brought to attention, or whose extent is unknown. In these respects, the child protection research of sexually abused victims for Quebec has entailed much courage and foresight.

## Emerging Trends

Considerable variation has characterized the development across Canada of special services for abused children. In some areas there is a clustering of innovative initiatives emanating from the public and private sectors. Elsewhere, little attention has been paid to the problem of child sexual abuse and no resources have been tailored to meet the problem. This situation stems from: a philosophy that general rather than special services are warranted; the non-recognition of these problems; a shortage of staff and resources; and the absence of persons sufficiently trained or experienced to deal with these issues.

The current acceptance of an interprofessional approach to child protection has arisen from a realization that the different forms of child abuse are too complex to be understood and handled entirely within the conceptual confines of a single discipline, and that the victim's needs overflow the boundaries of the services which the individual professions can provide. This shifting philosophy of providing services is epitomized by the move towards multidisciplinary participation in research planning, policy development, case investigation, consultation and management, and treatment of the victim, offender and family. Cooperation between members of different professions tends to occur in either of two settings: in hospital-based teams, or among organizations at the community level. The former resources are typified by teams functioning in Sainte-Justine Hôpital in Montreal and the Children's Hospital of Winnipeg, while the latter are exemplified by New Brunswick's Community Committees. Hospital teams function to perform a remedial role, that is, to concentrate most of

their efforts on diagnosis and treatment in suspected or confirmed cases of child abuse.

There is also a trend towards acknowledging that the perspectives of a number of disciplines must be taken into account if there is to be a valid assessment of the resources, programs and services required in any given locality. Experts in one field may be aware of problems, needs and pitfalls with which representatives of other disciplines are unacquainted. A consensus is beginning to emerge that pooling the diverse insights of these experts serves to maximize the chances of creating a comprehensive, truly effective range of services.

All provinces have developed policy manuals or guidelines for the use of professional workers dealing with abused children. These guidelines range in explicitness and detail from brief statements of policy concerning the appropriate responses by workers to situations encountered in the field to complete descriptions of procedures to be employed, standards to be maintained, definitions of relevant terms in the authorizing legislation and purposes and goals of treatment. The purpose of these materials is to foster consistency in service delivery in every part of a province and to establish a minimum standard of care available to children.

While most of the recent developments occurring in the provision of services for abused children represent a heightening of awareness and a strengthening of effort, there are still omissions in service. These problems include: the duplication of effort; an absence of effective co-ordination between service programs; and insufficient evaluation of whether policy initiatives, guidelines and programs are actually working and whether they tangibly benefit children. Crucial to the effective operation of these special programs intended to protect abused children is sufficient information about abused children, the problems that they experience and the benefits gained from different intervention strategies. In the Committee's judgment, the information that is available for Canada on these matters is insufficient and fragmentary.

In undertaking its mandate, the Committee was afforded an unusual opportunity to learn of the work of a number of innovative programs providing care for abused children across Canada. Possibly because of the size of the nation, the accepted principle of using two official languages and the responsibility for child protection services falling under the jurisdiction of the provinces, the Committee found that the activities of many of the programs were unknown in other parts of the country, and often, elsewhere in the same province. Instead of looking at precedents that had evolved in other provinces, and drawing upon this experience, there was a widespread predilection to assume that such developments did not exist, or to look abroad for consultation about new developments. In the Committee's judgment, the numerous developments that have evolved and that are emerging in Canada concerning all aspects of child abuse, including sexual offences against children, would be considerably strengthened by the more extensive sharing of this experience.

## References

### Chapter 26: The Child in Need of Protection

<sup>1</sup> The provincial child welfare legislation reviewed here includes:

- (i) Newfoundland. *Child Welfare Act*, 1972, S. Nfld. 1972, Act No. 37;
- (ii) Prince Edward Island. *Family and Child Services Act*, S.P.E.I. 1981, c. 12;
- (iii) Nova Scotia. *Children's Services Act*, S.N.S. 1976, c.8;
- (iv) New Brunswick. *Child and Family Services and Family Relations Act*, S.N.B. 1980, c. C-2.1, (proclaimed in force effective September 1, 1981);
- (v) Quebec. *Youth Protection Act*, R.S.Q. c. P.-34.1;
- (vi) Ontario. *Child Welfare Act*, R.S.O. 1980, c. 66;
- (vii) Manitoba. *Child Welfare Act*, S.M. 1974, c. 30;
- (viii) Saskatchewan. *Family Services Act*, R.S.S. 1978, c. F-7;
- (ix) Alberta. *Child Welfare Act*, R.S.A. 1970, c. 45;
- (x) British Columbia. *Family and Child Services Act*, S.B.C. 1980, c. 11 (proclaimed in force June 1, 1981);
- (xi) Yukon Territory. *Child Welfare Ordinance*, R.O.N.Y. 1971, c. C-4;
- (xii) Northwest Territory. *Child Welfare Ordinance*, R.O.N.W.T. 1974 c. C-3.

<sup>2</sup> Quebec. *Youth Protection Act*, *supra*, s. 23(j).

<sup>3</sup> Fraser, F.M., J.P. Anderson and K. Burns, *Child Abuse in Nova Scotia*, Halifax, 1973. (mimeo, 295 pages).





## Chapter 27

# Duty to Report

In this chapter, the two main questions considered are: “Who is responsible for supplying information that a child has been sexually abused?” and “What is done with the information after it is received?” The former question leads to a consideration of the abuse reporting provisions in provincial child welfare acts, while the latter necessitates an examination of the provinces’ central child abuse registers.

## Provincial Statutory Reporting Requirements

Generally speaking, our legal system tends to eschew laws which create a positive duty for one person to aid another (i.e., “good Samaritan” laws). The standard exception occurs when positive duties are established which apply to persons between whom there exists a special relationship (e.g., in ss. 197-201 of the *Criminal Code*). It may be argued that a special relationship exists between children and society at large. The existence of this relationship is indicated by the special legal status which traditionally has been afforded children, by the existence of statutes designed to promote the welfare of children, and by society’s establishment of special institutions and agencies specifically for the purpose of protection and caring for children. With respect to these societal concerns, the child welfare legislation of each province and of the Yukon Territory establishes that reporting child abuse and neglect is the responsibility of every person. While the wording varies from statute to statute, the relevant provisions effectively obligate everyone to report who suspects, or has reason to suspect, that a child is in need of protection or protective guardianship, is neglected, or that the security or development of the child is in danger (as those several terms are defined in each statute). In addition, the Acts of New Brunswick, Quebec, Ontario and Manitoba contain separate provisions requiring persons to report whose reasons for suspecting a child to be in need of protection arose in the course of their professional or official activities (in Saskatchewan, a similar provision applies only to peace officers). There is no requirement to report under the Northwest Territories’ Child Welfare Ordinance. In every jurisdiction (other than the Northwest Territories), the reporting requirement transcends traditional professional privileges, except for the solicitor-client privilege in some provinces.

In Manitoba, Saskatchewan, Alberta and British Columbia, there is no statutory provision for penalizing persons who fail to report a child in need of protection. (However, all provinces have a general statutory provision containing a penalty for persons infringing a provincial statute). In Ontario, there is no specific penalty for private persons but a fine of up to \$1000 is provided in the case of non-reporting professionals. The maximum penalties provided for in other jurisdictions are: Prince Edward Island, \$300; Quebec, \$500 for an individual and \$1000 for a corporation; Yukon Territory, \$500 or six months' imprisonment or both; Newfoundland and New Brunswick (for non-reporting professionals), \$1000 or six months' imprisonment or both; Nova Scotia, \$1000 or one year imprisonment or both.

Concerning the penalties for non-reporting, the issue must be addressed of whether such sanctions serve any function beyond a purely symbolic one. Only two instances are known in Canada in which a person has been charged with failure to notify authorities of a suspected case of abuse.

Society's use of sanctions is intended to serve at least two distinct ends — those of education and deterrence. With respect to the former, it has been noted that:

The purpose of such legislation may be to educate, direct and reinforce good intentions, subject perhaps to an occasional symbolic or admonitory prosecution to keep professionals alert to their responsibility. News of proceedings would be circulated in professional journals, and the requirement of the law would thereby be emphasized.<sup>1</sup>

As for their deterrent function, penalties may dissuade persons from keeping silent about suspected abuse cases; the shared reluctance of professionals and laymen to incur legal sanctions would suffice to counter-balance their reluctance to entangle themselves with the criminal justice or child welfare system and to gain the possible opprobrium of relations, friends or neighbours. Penalties possess the potential to educate and deter the general public no less than professionals.

Society's concern must be with finding ways to assure that child sexual abuse is reported with greater regularity and reliability. Children are less able than most persons to speak out about the abuses they sustain; some are too young or too incapacitated to be verbal, some are handicapped by fear or ignorance, and some are bound by a desperate love to their abusive families. Adults must provide information that children cannot.

A further question arises as to whether non-reporting professionals should be subject to more severe penalties than non-reporting laymen. The argument in favour of such a differentiation would assert that professionals occupy a special position of public trust and responsibility, that they are relied upon by others, and that they are expected to adhere to ethical codes more rigorous than those which guide the conduct of ordinary persons. Thus, a professional person's dereliction of a vital public duty would be more blameworthy than a layman's. Moreover, given their education and training, and the amount of



contact that many of them have with children, professionals may be in a better position to observe and identify cases of child abuse than any other group or class within society.

There are competing ethical concerns that tend to dissuade professionals — especially physicians and lawyers — from reporting suspected or known cases of physical and sexual abuse. There can be no doubt that most professionals are very serious about their duty of non-disclosure and are inclined to safeguard the rights of their clients to keep confidential any statements made to them in the course of their professional relationships.<sup>2</sup> Another contentious issue is that of whether the solicitor-client privilege should take precedence over the duty to report. There can be no doubt that the solicitor-client privilege represents one of the fundamental safeguards of our system of administering justice. The decision as to whether the importance of that safeguard is outweighed by the need to maximize the protection extended to children is one that cannot be made on any firm or objective basis.

The need arises to protect two virtually indispensable, but nonetheless incompatible, interests. Between these two interests a choice must be made — a choice which will depend on the priorities and values of each set of provincial legislators. In Prince Edward Island, New Brunswick, Quebec, Ontario and British Columbia, the decision has been to preserve the privilege; in other relevant jurisdictions, it has been determined by statute that solicitor-client privilege — like the other professional privileges — must yield to the duty to report.

Another means by which legislators have attempted to encourage reporting has been to establish statutory immunity from civil liability for those persons who inform the proper authorities of their reasonable suspicions that a child has been abused. The child welfare legislation of Newfoundland, Nova Scotia, Ontario, Manitoba, Alberta, British Columbia and the Yukon protects the reporter from liability, except where the report is made maliciously or without reasonable and probable grounds (or cause). In Saskatchewan, the protection applies to all reporters save those persons whose reports are false and are made maliciously. In New Brunswick, immunity is extended to those persons who report in good faith, and similarly, the Quebec Act provides that no person shall be prosecuted for acts done in good faith. In Prince Edward Island, liability is precluded for those persons whose reports are based on reasonable and probable cause.

In the National Child Protection Survey, about one third (36.7 per cent) of the mothers of victims were the first person to know of the sexual abuse. Others in the family who were first to know about these incidents were: sister (8.7 per cent); other family member (7.1 per cent); brother (4.3 per cent); and father (1.4 per cent). If the offender was part of the victim's family and in situations where the mother had known about the offence (56.6 per cent), about half had not reported it to the police (48.3 per cent); to child protection services (45.5 per cent); or to anyone else (43.7 per cent).

Findings for the fathers indicate that if he knew of the offence and if the offender was part of the victim's family, the father reported the offence to the police in 0.9 per cent of all the cases; to the child protection agency in 1.0 per cent of the instances; or to anyone else in 0.5 per cent of the cases. The responses for the fathers were either inapplicable or unreported in 90.6 per cent of the cases.

The findings show clearly that many parents of victims served by child protection services often did not feel the necessity of or comfortable with reporting to authorities. The major reasons cited by child protection workers why mothers had not reported incidents which they had known about were:

Fear of or coercion by offender	19.4%
Fear of the law and social services	18.9%
Fear of economic and psychological consequences	17.0%
Disbelief that the incident had occurred or that it was an offence	14.9%

As documented in Chapter 7, *Dimensions of Sexual Assault*, one in four of the cases involving sexually abused children known to agencies had been initiated by victims or family members on their behalf. Other referrals of these cases were made respectively by: school staff; physicians; other health workers; police; and rape crisis/sexual assault centres. Information from the Quebec Child Protection Survey confirms this pattern of reporting, with the police being the highest reporters (17.1 per cent) to the Quebec Director of Youth Protection; "professionals" were the next most frequent reporters (15.6 per cent), followed by mothers (9.9 per cent) and the victims themselves (6.5 per cent).

The findings of the National Population Survey found that few persons who had been sexually assaulted as children had contacted child protection services nor had such referrals been made on their behalf. Most of the victims who had sought assistance from official agencies had initially turned to physicians, hospitals and the police. When the findings of the national surveys of police forces and hospitals are considered, it is evident that a sizeable proportion of sexually assaulted children served by these services had not been referred to child protection services.

Of medically examined patients whose experience was documented in the National Hospital Survey, three in five (59.7 per cent) had involved contacts with child protection services. Child protection workers themselves had initiated about one in five (22.7 per cent) referrals of patients examined at hospitals. Of the remainder of the patients who had not been referred to hospital by child protection workers, referrals to these services were subsequently made in about a third of the cases. Of the referrals initiated by child protection services, these workers had accompanied about two in five of the victims to hospital.

The findings of the national surveys show that in relation to the average length of time taken by victims to contact helping services, or for these contacts

to be made on their behalf, about three in five cases investigated by the police were reported within 24 hours and about half of the patients examined at hospitals obtained care within a day. In contrast, only one in five cases served by child protection workers came to their attention within 24 hours of the assaults having been committed, and for one in three cases, over a year had passed before these services had been notified or learned of the incidents (see Chapter 7, *Dimensions of Sexual Assault*).

The concept of crisis intervention suggests that assistance provided in relation to maladaptive functioning is likely to be most effective when it is provided immediately following a crisis or a harmful event. The gap which occurs between the occurrence of sexual assaults against children and when these cases become known to child protection workers may seriously dissipate the likelihood of their being able to assist them effectively.

On the basis of the findings of the national surveys, **the Committee reaches the inescapable conclusion that the process of referral envisioned by provincial legislators and relied upon by child protection services is operating randomly and inefficiently.** Public and professional ignorance about the duty to report may well be one culprit. Lack of faith in the ability of child protection services to deliver real aid to abused children and their families may be another source of the problem. **It is evident that child protection services are neither extensively turned to directly by sexually assaulted victims nor do they receive referrals on a sizeable proportion of cases known to the police or hospitals.**

## Child Abuse Registers

The central child abuse registers are files containing vital information concerning child abuse cases occurring within a given province. Registers, or analogous record-keeping systems, are authorized by the child welfare legislation of eight provinces: Newfoundland, Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Rather than legislating the establishment of a single, central register, Prince Edward Island's *Family and Child Services Act*, S.P.E.I. 1981, c. 12 s. 45(2)-(3) requires individual care-providing facilities to maintain registers containing the case histories of children receiving services, recorded in a manner specified by regulation. Child welfare legislation in New Brunswick, the Yukon and the Northwest Territories contains no provisions for establishing registers.

Each register receives its information on standardized forms from the child protection services within that province. The nature and degree of detail of the information recorded varies from province to province. For instance, British Columbia's register uses brief reporting forms on which a child protection worker can record a limited number of basic facts about a given case. On the other hand, Ontario has opted for far more detailed initial reports; the Ontario register's reporting form has spaces for the recording of basic information about: the child and his or her family; the injuries sustained; the nature,



date and place of the alleged incident of abuse; the number of children under age 16 in the home when the incident occurred; any previous involvement by a Children's Aid Society with the child and family; action taken on behalf of the child (whether medical or social service); the present whereabouts of the child and alleged abuser; whether court action is pending with respect to the alleged abuse; and the current status of the case. The nation-wide picture with respect to the storage of child abuse-related information is one of enormous variation ranging from jurisdictions where no collection occurs, to ones where a limited amount of information is gathered, to ones where detailed accounts of child abuse cases are recorded.

A fundamental distinction between the information collected by the various registers concerns the stage at which the case is reported to the central file. In some jurisdictions, information is required to be sent to the register only after a report of abuse or neglect has been investigated and verified by a case worker; elsewhere, every report of abuse or neglect must be forwarded to the register (these provinces can be described as having "reporting" registers). Although some jurisdictions have not clearly designated to which category they belong, the provinces whose registers record only verified cases appear to include Newfoundland, Nova Scotia, Ontario and Saskatchewan, while it appears that every received report is recorded in the registers of Quebec, Manitoba, Alberta and British Columbia.

While there is variation from province to province, the range of functions which child abuse registers were intended to fulfill includes the following purposes.

- Providing information for research in order to develop a clearer understanding of the nature and extent of child abuse;
- Monitoring the management of cases;
- Assessing the potential risk of child abuse. Knowledge of prior incidents of abuse, either within the same or a different province, may influence workers' decisions as to how best to help both the child and family; and
- Checking that new cases have no outstanding court orders against them (such as the child being under a supervision order awarded to another agency).

Follow-up reports, submitted periodically and at every critical juncture in the management of a case (e.g., transfer to another agency or closure) can extend the length of time over which these functions can be exercised. (Form 7 used by the Ontario Ministry of Community and Social Services is an example of this type of follow-up report).

In light of the functions which registers were intended to fulfill, their effective operation is contingent upon the extent to which these purposes are realized with respect to: the complete reporting of cases of child abuse to the registers; the regular consultation of the registers by child protection workers in relation to children being served; the standardized transfer of information from the registers between jurisdictions in instances where abused children and their

families have moved; and the updating and expungement of cases from the registers. The findings of the National Child Protection Survey are drawn upon as the basis of reviewing how these functions were being met in relation to the management of sexually abused children and youths.

## Reporting of Cases

If the purposes for which registers were established are to be effectively realized, then it is essential that the register of each province should include a reasonably complete listing of all verified cases of child abuse occurring in that province which are known to child protection workers. The value of the register for assessment of cases is severely vitiated if its records are incomplete. For example, if an abusing parent has been involved with child protection services on previous occasions, and none of these contacts has been reported to the register, the child protection worker who now suspects that the parent is mistreating children again will receive no assistance from the registry in attempting to confirm these suspicions.

If the register is to be used as a source of information for basic research, or for resource allocation and program planning, then the files must contain a comprehensive record of the caseload being handled by child protection workers. The sizeable non-reporting of cases to the registry would render invalid statistical research derived from these files. Non-reporting could also result in an official under-estimation of the extent of the child abuse problem.

In considering the question of the completeness of the information in registers in relation to the occurrence of child sexual abuse, the Committee drew upon findings concerning: the national surveys with respect to the number of cases known in comparison to the numbers listed in registers; the professional interpretation of reporting cases to registers; and the reporting of cases by child protection workers documented in the National Child Protection Survey.

Province	Number of Cases Reported in National Surveys	Number of Cases Listed in Register, 1982
Newfoundland	101	22
Nova Scotia	123	15
Quebec	525	721
Ontario	1,763	330
Manitoba	231	117
Saskatchewan	196	76
Alberta	146	340
British Columbia	215	679

In its national surveys, the Committee obtained information from police forces and hospitals across Canada, but in no instance was this information complete in relation to documenting all cases of child sexual abuse known to these services in a particular province. On the basis of the information provided, it was feasible to document separately the proportion of sexual assaults known to the police and hospitals participating in these surveys in which no contacts had been made with child protection services and to add these totals to the number of cases of child sexual abuse found for that province in the National Child Protection Survey.

In interpreting these findings, the point is reiterated that the cases of sexual assaults against children under age 16 identified by the Committee were based on fragmentary sources in each province (i.e., typically one or more police forces, a hospital and child protection services). It is evident that although the coverage obtained by the Committee was limited, the number of cases identified in several provinces either sharply exceeded the number of cases of child sexual abuse listed in the provincial registers for 1982 or constituted a substantial proportion of the cases that had been reported to the registers. All cases in the police and hospital surveys where contacts had been made with child protection services were deleted to preclude a potential "double-counting" of results.

What is meant by the "reporting" of a suspected or verified case of child sexual abuse to a register may be a matter that is subject to different interpretations by child protection workers. In the National Child Protection Survey, it was found that workers indicated that reports had been made to provincial registers (where these had been established) for about three in four (72.0 per cent) of all children being served. In a special analysis, it was found that there was a small, but statistically significant relationship between the rate of reporting cases to provinces having "reporting" rather than verified "abuse" types of registers.<sup>3</sup> These findings indicate that child protection workers were more likely to report cases where this was either done automatically with cases being opened or where sexual abuse was suspected than to registers having the requirement that cases be verified prior to their being reported.

There was no difference by the age of victims in relation to the reporting or non-reporting of cases to registers. **There were striking differences, however, with respect to cases which were reported or not reported to registers by: the sex of the children; and the types of sexual acts committed.** With one exception, there was a tendency for more sexual acts against girls to be reported than those against boys. However, most of the children served by child protection workers were girls, and when their experience is considered, it is evident that, in general, a higher proportion of sexual acts involving anal contacts and the sexual fondling or touching of the child was reported than the proportion of acts involving attempted vaginal penetration and vaginal penetration with a penis. In the latter category, of 134 cases in which vaginal penetration with a penis were noted in case records by workers to have occurred, a third (32.8 per cent) of these incidents were not reported to registers. Of the 43 instances of attempted rape or vaginal penetration with an object or a finger, over a third (37.2 per cent) were unreported to registers.



Table 27.1

**Types of Sexual Acts Committed Against Children Reported  
to Provincial Child Abuse Registers**

Type of Sexual Act Committed Against the Child	Cases Reported to Registers			
	Males		Females	
	Reported	Not Reported	Reported	Not Reported
	Per Cent	Per Cent	Per Cent	Per Cent
Fondling/touching breasts, buttocks, genital area	76.5	23.5	76.8	23.2
Oral-genital/anal	66.7	33.3	85.7	14.3
Attempted vaginal pene- tration with penis, object, finger	—	—	62.8	37.2
Vaginal penetration with penis	—	—	67.2	32.8
Attempted anal penetra- tion with penis, object, finger	50.0	50.0	80.5	19.5
Anal penetration with penis	73.7	26.3	91.7	8.3

*National Child Protection Survey.* Types of sexual contact grouped on basis of more specific listing of acts; findings given for six provinces having registers, n=539.

The findings indicate an inversion in the reporting of sexual abuse to registers with notification being made more often for less serious than for more serious sexual acts. In this regard, some child protection workers may be reluctant to report cases when they believe that notification might result in a police investigation or some other form of intervention which does not accord with the agency's treatment plans for a child. The evidence, however, indicates that a number of suspected serious sexual offences against children known to child protection workers were not reported to registers.

The three in four ratio (72.0 per cent) of reporting cases of suspected or verified cases of child sexual abuse to registers must be interpreted cautiously on several grounds. First, as noted, in some provinces the registration of a case is synonymous with its being opened by an agency, and thus, all cases are reported. For this reason, the seven in 10 ratio may be inflated for "abuse" registers as contrasted to those operating on a basis of "reporting" cases.

The second reason for caution in interpreting this reporting ratio hinges upon the process involved between whether a worker makes such a report and whether that report appears in the listing maintained by a provincial register. Allowing for the fact that two provinces did not have central registers and that

the Committee did not obtain information on all cases known to child protection workers in most provinces, it was found in three provinces that the number of cases which child protection workers said they had reported to registers sharply exceeded the total number of cases of child sexual abuse listed in 1982 in the respective provincial registers. These discrepancies ranged between 28.9 per cent and 40.0 per cent. The reasons why these discrepancies occurred may be due to the belief by workers that reports made to a child protection agency have been forwarded to a register when in fact the agency in question did not send the reports to the register.

These findings about the three in four cases of child sexual abuse having been reported to registers contrast sharply with the finding that only one in five (19.7 per cent) child protection workers consulted the registers in relation to the cases upon which information was obtained in the National Child Protection Survey. This anomaly may be partially explained by the fact that in the survey, a number of child protection workers stated what they believed should have been reported rather than what had in fact happened.

A different gauge of the extent to which provincial child abuse registers contain complete information about cases of child sexual abuse was obtained by a question in the National Child Protection Survey which dealt with sexual abuse known to have been committed prior to the case reported to the agency. The question asked whether the child protection worker knew if sexual abuse had previously been committed and who were the suspected offenders and victims.

Reporting of Previous Sexual Offenders to Provincial Register	Number	Percentage
Not reported	84	57.5
Reported for other abuse or neglect	39	26.7
Reported for sexual abuse	12	8.2
Unknown	11	7.5
TOTAL	146	99.9*

\* Rounding error

Workers stated that prior sexual offences were known to have been previously committed in about one in three (31.5 per cent) families of children whose cases were being investigated. Four in five (80.2 per cent) of these offences were against a child or children. Of the 146 suspected offenders, reports had been submitted to a provincial register for abuse and neglect in one in three instances (34.9 per cent). Less than one in 12 (8.2 per cent) of these suspected offenders had been reported for sexual abuse to a register.

When child protection workers were asked in the National Child Protection Survey why cases of suspected child sexual abuse had not been reported to a register, the most commonly cited reasons were:

• Insufficient evidence	31.4%
• Uncertainty about reporting procedures	23.1%
• The belief that no register existed in the province	24.4%
• The victim was unwilling to give evidence	6.4%
• The assault was believed to have been an isolated incident	4.5%
• Other	10.2%

Factors which foster incompleteness in the reporting of cases of child sexual abuse to registers may stem in part from the definition of “child abuse” adopted for the purposes of determining which cases are or are not to be reported. Reflecting the definitions set out in provincial child welfare statutes which apply solely to parents or caretakers, other types of abuse involving other relatives, friends or strangers may be excluded from the registers. Cases involving offences prohibited under the *Criminal Code* — such as sexual intercourse with a stranger — need not be reported to a register (although in practice some are). Further, in at least one province, the definition of sexual abuse is limited to children 13 years and younger, thus denying protection to victims over 13, but under the age of majority.

Additional factors which may account for the incompleteness in reporting cases of child sexual abuse include missing referrals, discretionary reporting by workers, lack of sufficient co-operation with other organizations, bureaucratic stress and age restrictions.<sup>4</sup> First, many abuses committed by non-family members are never reported to child protection agencies. Second, child protection workers use their professional judgment as to whether to report an incident of abuse to the register; if the abuse was an isolated incident, occurred long ago, or if it is felt that the family should be spared the stigma of being listed, a report will not be made. Third, in provinces where suspected abusers are notified of their inclusion on a register, the process of reporting may be delayed due to an ongoing police investigation. Fourth, child protection workers carry substantial caseloads, with clients who often go from crisis to crisis in which the physical and the emotional well-being of children are endangered; this situation may leave workers — who, for the most part, maintain an ethic that values work with persons over paperwork — with limited time and little inclination to fill out forms. Finally, the abusive incident may not be recorded if the abuser was a child himself or if, at the time of disclosure, the victim was over the age of majority.

The forms on which initial reports are made may affect the extent to which child protection workers submit information to registers. This conclusion is based on the experience of British Columbia, where the formats of the complaint and follow-up forms were simplified at the beginning of 1978. The modification of these forms “caused a tremendous increase in the forwarding of information to the Registry.”<sup>5</sup> The number of verified cases submitted in 1977 (before the changeover) was 653; in 1978, the number of verified cases was 1,061, an increase of 62.5 per cent in a single year.



# Consultation of Registers

Provincial registers can only serve as an effective aid in the assessment and provision of assistance to sexually abused children to the extent that child protection workers themselves routinely refer to them upon opening cases. Information from a 1978 study of Ontario's 50 Children's Aid Societies found that 12 stated that their workers "always" or "usually" consulted the Ontario Register and 24 "seldom" or "never" consulted it.<sup>6</sup>

**In the National Child Protection Survey, it was found that in provinces where registers had been established, only one in five (21.2 per cent) child protection workers said that they had consulted registers in relation to cases involving child sexual abuse.**

Proportion of Cases in Which the Register was Consulted	Number	Percentage
Consulted	114	21.2
Not consulted	379	70.3
Not reported	46	8.5
TOTAL	539	100.0

On the basis of the findings of the two studies, **it is difficult to make a strong case for the utility of provincial child abuse registers as these are presently operated and as they are used by workers in relation to sexually abused children. It is evident that most of the workers whom it might be expected would routinely use this resource in fact do not use it. In the absence of registers being regularly consulted in relation to the child sexual abuse, the major purpose for which they were established is vitiated.**

## Transfer of Information between Jurisdictions

The information contained in a provincial child abuse register is restricted to cases occurring within that province; the mobility of victims and their families, however, is not similarly restricted. In its meetings with experienced police officers, physicians and child protection workers across Canada, the Committee learned of numerous instances where victims had been moved from jurisdiction to jurisdiction, as their parents sought to escape social service or police intervention and the opprobrium attendant upon the community's discovery of their abusive behaviour. In situations where the previous incidents of abuse occurred in another jurisdiction or region, and the case was handled by a different agency or a different office of the same agency, then the agency now seeking to provide appropriate services is likely to learn nothing of the victim's history from its own files. Only consultation of the central registers will supply information that will strengthen suspicions that abuse is re-occurring within a

family, that will reveal that court intervention was necessary in the past or that will list the various treatments tried.

The utility of consistent consultation is also affected by the speed with which information may be culled from a register and transmitted to workers in the field. If the information is transferred physically (e.g., by mail or courier), it may not arrive in time to help a child protection worker who is faced with critical decisions, particularly if the worker's office is situated in an outlying location. This dilemma could be resolved by having the information in central registers placed on computers, with all agencies having computer terminals to provide rapid links with the central information bases.

There are two methods by which the sharing of information could be facilitated between provinces. First, whenever a child protection agency learns that a family in which abuse has occurred has moved to another province, that agency could arrange to have the family's registry file (or a copy of it) sent to the other province's register. Second, when an agency makes contact with an abusing family, and learns that the family formerly resided in another province, the agency could contact the register of the other province.

Both methods of interprovincial communication are subject to difficulties. At least one agency must know the prior or subsequent location of the family before information can be sought or sent. Families which move from one province to another without contacting child protection services may break the interprovincial chain of information. Families which refuse, as is their right, to inform an agency of where they previously resided may accomplish the same feat.

The effective operation of either method would require that all provinces having registers to adopt certain uniform procedures. If it is decided to have the files of registers transferred from one province to the next, then the registers must have authorization to release copies of the files at the request of child protection services, and to accept files sent from other jurisdictions. If registers are to provide information from their records to workers from other provinces, they must also have the necessary authorization and procedures for so doing.

Only in Nova Scotia and Ontario does a formal commitment appear to have been made to facilitate a free flow of information between jurisdictions. The situation in other provinces is less clear; and exact mechanisms for transmission remain obscure. It is evident that if the interests of sexually abused children are to be effectively served and protected, then the operation of the various provincial registers must function in an orderly, clearly defined way that fosters an unrestricted exchange of relevant information between the child protection services of each province, including those not currently having registers. **At present, the policies of the various provinces concerning inter-jurisdictional information sharing are inconsistent and lack formal structure.**

## Expungement Procedures

For a number of provincial child abuse registers, the practice of registering every report has the advantage of not forcing child protection workers to judge whether or not a certain degree of inappropriate child-rearing conduct actually constitutes abuse, and is registerable. Against this advantage, however, is the likelihood that these all-inclusive registers will receive and file not only valid reports, but also false reports, including some made maliciously or without reasonable grounds.

A number of mechanisms are available to counteract the potential unfairness of registers that collect unconfirmed child abuse reports. There is the option of requiring workers to submit follow-up reports to the register within a specified period of time after an alleged abuse case comes to the attention of a child protection service. Such reports would state whether or not the original suspicions of abuse had been verified. However, there is an argument to be made that even a follow-up statement exonerating a reported abuser is insufficient to correct the injustice done to that person. The only adequate remedy for persons improperly registered is the expungement of their names from the register. Establishing procedures by which persons may have their names removed from the register would serve as a salutary safeguard to ensure that even individuals who are "confirmed" as abusers are not deprived of the right to challenge being thus classified.

The possibility of expungement is of no value, though, if persons registered as alleged or confirmed abusers are not notified of their registration. It may well be that registering a person as a child abuser without so informing him or her, constitutes a violation of his or her civil rights (particularly under the new *Charter of Rights and Freedoms*). There can be no doubt that it is an ethically questionable practice to enter an individual's name in a register of persons who engage in conduct of which society strongly disapproves, without letting him or her know that he or she has been so labelled. This practice effectively denies the person any avenue of appeal. When the Committee undertook its review, there were three jurisdictions where persons received no notification of their names having been placed on the register. These jurisdictions were: Newfoundland, Manitoba and Saskatchewan. In Manitoba, all reports were recorded in the register, and not simply those which had been verified. This means that the name of a person who has never committed any form of abuse may be registered without that person ever knowing of it. In Alberta, there appears to be no formal (i.e., written) notification of the person having been registered, but it is the practice to inform the person of his or her registration during the investigation of the report. No information was received concerning the practice in Quebec with regard to notification of registered persons. In Nova Scotia, Ontario and British Columbia, official notification procedures have been adopted.

As far as the actual availability of expungement procedures is concerned, no method exists in the following provinces by which a person whose name has been entered on the register can apply to have it removed: Newfoundland, Quebec, Manitoba, Saskatchewan and Alberta. Official expungement procedures



have been established in Nova Scotia, Ontario and British Columbia. In Nova Scotia, these procedures are part of a package of safeguards authorized under s. 14 of the *Children's Services Act*, S.N.S. 1976, c. 8. Section 14 provides as follows:

1. Proven cases of abuse shall be removed from the Register after ten years from the date the case was last reported to the Register.
2. Cases of alleged abuse shall not be registered when the agency has been unable to substantiate the allegation and it is the mutual opinion of the Administrator, and the agency which investigated the allegation, that abuse did not occur, and is unlikely to occur.
3. Cases of alleged abuse which may have been registered shall be removed from the Register where a Family Court dismissed an action under s. 49 of the Act [i.e., an application to have a child declared to be in need of protection.]
4. When a case is not removed from the Register, the party wishing the case removed may place the matter before a judge of the Family Court for review.
5. A judge conducting a review pursuant to subsection (4) may order that the case be removed from the Register, or subject to subsection (1) remain on the Register.

Ontario's expungement procedures are set out as follows in the *Guidelines for Reporting to the Register — Child Abuse*:<sup>7</sup>

A name recorded in the Register will be retained for a minimum period of 25 years, unless the Director has ordered the name expunged. Names recorded on the former Registry will be expunged if there has been no access to them for 16 years following the year of registration.

Any person who receives notification that he is identifiable from the Registry or Register may inspect the information and request a Director of Child Welfare to expunge his name altogether or to otherwise amend the identifying information.

This includes persons named on the Registry or Register as allegedly permitting abuse, and children named as abused children where the alleged abuser is not known. In the latter case, the parents or guardians of the child may inspect the Registry or Register and request removal or amending of the information.

The Director will not expunge a name from the Registry or Register unless he has reasonable grounds to believe that the information is in error or should not be in the Registry or Register.

Normally, a name will be expunged when a Children's Aid Society advises that after further investigation they believe the case is not one of reportable abuse.

#### *Expunction Hearing*

Where the Director receives a request to expunge a registered person's name or to otherwise amend the Registry or Register, the Director or his delegate

shall hold a hearing pursuant to *The Statutory Powers Procedure Act*, 1971 before *refusing* the request.

... Long before the case is heard, the verification process will have been completed, and any serious doubts or questions concerning registration will have been examined by the Society and the Ministry.

Any party to an expungement hearing may appeal the decision before the Divisional Court of the Supreme Court of Ontario.

**Careful consideration has been given in Nova Scotia and Ontario, and in the review procedures instituted in 1982 in British Columbia, to the potential for procedural injustice inherent in any child abuse registry, and accordingly, measures have been adopted to assure that this potential is not realized. In this respect, these provinces might well be looked to as models by the other provinces, in some of which the establishment of a central register has been accomplished with a disregard for the possibility of civil rights' violations.**

The question of expungement leads to a consideration of the related issue of whether there should be established a set period of time after which the names of abusers would automatically be struck from the register, provided that they had not committed further acts of abuse within that period. As has emerged already, this approach has been adopted in Nova Scotia and Quebec, with Ontario going the opposite route and setting a minimum period of 25 years for names to be left on the current register. Nova Scotia has limited the lifespan of entries to 10 years from the date that the given case was reported last, while Quebec has provided for expungement when the child in question reaches age 21.

This practice of automatic deletion may be useful for a number of reasons. First, it tends to keep the registers from becoming cluttered with old cases and maintains them in an up-to-date condition. Second, the practice may be seen as a humane one designed to prevent non-repeating abusers from having their names permanently blackened. On the other hand, the elimination of old records may make the register useless for research purposes — particularly when the research is designed to evaluate differences between the nature and incidence of abuse in the present and in the past. Automatic expungement also prevents workers from tracing past offences beyond a certain period, of persons whom they suspect to be currently abusing children. (For example, the National Child Protection Survey found 2.1 per cent of the offenders were grandfathers). If provincial registers are retained, then a balance must be struck between the rights of offenders not to remain indefinitely on a list whose members are stigmatized by society and the rights of children to be protected by as extensive documentation as possible.

## Summary

On the basis of its research findings concerning the use of child abuse registers, the Committee found that:

1. A sizeable proportion of cases of child sexual abuse known to the police, physicians and child protection workers was not reported to child abuse registers;
2. Reports to registers had only been made in one in three cases of previous instances of child sexual abuse of cases currently open;
3. Proportionately more minor than serious sexual offences were reported;
4. Child protection workers had consulted registers in relation to only one in five cases which were open;
5. Procedures relating to the exchange of information between provinces are inconsistent and lack formal structure; and
6. Several provinces having registers have no formal procedures with respect to the periodic review and expungement of cases listed in the files of registers.

In the Committee's view, provincial child abuse registers are clearly not being used to the extent or in the manner they had been intended to by legislators. The utility of their functions appear also to be severely limited as case catalogues, research aids or assessment tools.

**The use of the registers is characterized by a selective reporting of cases, an infrequent consultation by workers and an absence of effective means of exchanging information between provinces. This system cannot be construed as one that is particularly helpful in affording protection to sexually abused children. In the Committee's judgment, the alternatives are clear: either the registers must become effective means of identifying child sexual abuse or they must be scrapped in favour of more effective procedures to provide protection for these children. The current operation of the registers is both inefficient and ineffective and does little to assist and protect most children who are sexually abused. Most of the workers do not routinely consult this resource, only a fraction of cases which occur is reported, and review and expungement procedures in use in some provinces require clear specification.**

In its general review of public services mandated to assist and protect sexually abused children, the Committee found that the main information reporting system used by each service was seriously flawed in relation to its accuracy of classification of sexual offences against children. This conclusion is documented elsewhere in the Report in relation to police and crime statistics, the medical classification of diagnoses and the identification of convicted child sexual offenders. In relation to these broader trends, the findings concerning the accuracy of the information reported to provincial child abuse registers and their comparatively infrequent use by child protection workers are not unexpected.



The needs of sexually abused children and youths are complex. These children require expert assistance provided by several helping professions. In the Committee's judgment, in most instances, the welfare and protection of the child is too crucial a concern to be attended by a single profession — whether this be by the police, physicians or child protection workers. What is required in this regard is the effective co-ordination of expert assessment and care provided by several professions channelled through as few workers as possible in directly serving the needs of these children.

Elsewhere in the Report, the Committee recommends, in relation to the provision of care for and the protection of sexually assaulted children, that it be a statutory requirement for each case in which child sexual abuse is suspected or confirmed for the services of the police, physicians and child protection workers to be co-ordinated in the assessment of a child's needs, the provision of care and their follow-up.

As a by-product of this mandatory interprofessional co-operation, the Committee believes that a more accurate assessment of a child's situation and needs will be realized, that victims themselves will be better served and protected and that more complete information will be obtained by participating services about the identification and the extent of occurrence of child sexual abuse.

**What is required is a central source of pooled information for each province rather than the existing inefficient and inaccurate classification systems now in use which serve little useful purpose as means to protect sexually abused children. To the extent that existing systems of classification used by the police, physicians and child protection workers remain unaltered, they will continue to exist by virtue of entrenched custom, professional indifference or for the symbolic purposes of appearing to serve sexually abused victims, but in fact not doing so for most children and youths against whom sexual offences are committed.**

## References

### Chapter 27: Duty to Report

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- <sup>3</sup> Statistical analysis yielded a Cramer's  $V = 0.348$ .
- <sup>4</sup> Lane, M.E., *The Legal Response to Sexual Abuse of Children* (October, 1982 Toronto: The Metropolitan Chairman's Special Committee on Child Abuse, p. 43).
- <sup>5</sup> Ellingham, J.C. 1978 *Report on Registry of "Protection of Children Act" Complaints*, Victoria: 1979, (17 pages, mimeo), p. 2.
- <sup>6</sup> Harvey, T.G., et al., *A Study of Guidelines for Practices and Procedures in Handling Cases of Child Abuse in Ontario's Children's Aid Societies* Toronto, June 9, 1978, p. 31.
- <sup>7</sup> Ministry of Community and Social Services, Children's Services Division, *Guidelines for Reporting to the Register — Child Abuse* Toronto, February 1981, p. 9.





## Chapter 28

# Provision of Child Protection Services

Child protection services are established by provincial child welfare legislation as the official agencies to receive reports of and to provide assessment, care and protection for neglected and abused children. In relation to its mandate, the Committee was instructed to consider services rendered on behalf of sexually abused children and how they could be afforded better protection. It was in this regard that, with the co-operation of child protection services in all provinces and the Yukon, the Committee undertook its national survey which documented the experience of young sexually abused victims cared for by these workers.

The development and design of the National Child Protection Survey are given in Chapter 26, *The Child in need of Protection*. The national survey included three components, each of which obtained common basic information, but varied in relation to other items. The three sub-studies were:

1. *National Child Protection Survey* This survey included: Newfoundland, Prince Edward Island, New Brunswick, Nova Scotia, Manitoba, Saskatchewan, Alberta, British Columbia and the Yukon. The full research protocol was used to obtain findings in these jurisdictions for 578 sexually abused children. In four provinces (Newfoundland, Prince Edward Island, Nova Scotia and Saskatchewan), all cases reported to agencies were documented.
2. *Quebec Child Protection Survey* Le Comité de la protection de la jeunesse undertook a survey of services in all regions of Quebec, totalling 403 cases. Approximately half of the items used in the National Child Protection Survey were also incorporated in the Quebec survey.
3. *Ontario Child Abuse Registry* The Ontario Ministry of Community and Social Services provided access to the files of the Child Abuse Registry. All cases ( 457) reported to the Registry between January, 1981 and July, 1982 were documented.

In order to draw upon as complete information as possible, different combinations of sources relating to the experience of 1438 sexually abused children were used in relation to particular issues. These were coded, respectively:

- Per cent A — National Child Protection Survey, Quebec and Ontario, n=1438

- Per cent B — National Child Protection Survey and Quebec, n=981
- Per cent C — National Child Protection Survey and Ontario, n=1035
- Where the reference is to the National Child Protection Survey, only this source is used, n=578

In Chapter 7, *Dimensions of Sexual Assault*, a description is given of some of the characteristics of victims served by child protection services and the nature of the assaults which they experienced. In this chapter, additional findings are given which describe the children and families served by child protection agencies. *These findings indicate that, in general, the sexually abused victims served by these workers represented a special segment of the Canadian people, a fact which needs to be borne in mind when the findings are being considered.*

Because a number of special words or phrases are used in the child welfare field, a brief glossary is provided of some of the terms used in this chapter.

#### Glossary of Words and Terms in Child Welfare Field

**Agency.** Commonly used by child protection workers to refer to the officially designated provincial service or children's aid society responsible for providing services to abused children.

**Assessment.** The initial phase of case management which comprises a complete collection of information on the child, his or her present state, living conditions, past and present development, and similar information on significant adults and other siblings in the child's life. The primary purpose of the assessment is to develop an appropriate scheme of intervention to meet the child's needs.

**Child Protection Worker.** An employee of an agency who is usually, but not in all instances, a social worker.

**Client.** Refers to the person or family served by an agency.

**Counselling.** Encompasses services provided by workers, including the mutual exchange of information structured in order to facilitate change in the client's circumstances or situation.

**Intervention.** The procedures used by child protection workers which are intended to produce change in the circumstances of clients. May be used interchangeably with 'treatment'.

**Mother/Father-figure.** Refers to persons filling parental roles for children, including natural parents, adoptive, step, foster, common-law and parent's friend relationships.

**Open Case.** Refers to a client currently being served by an agency.

**Psychosocial.** Used by social workers to refer to the interplay of psychological and social forces impinging upon clients which may affect their ability to function effectively.

**Reconstituted Family.** A family in which an original parent is absent by death, divorce or separation and is replaced by one or more new members.

## Characteristics of Children and Families

Well over eight in 10 children served by the agencies were girls, and when the group of children aged 16 and 17 is included (a reflection of the age limits established by some provinces), then about a third (30.7 per cent A) of the 1438 boys and girls were older teenagers. Two conclusions may be drawn from these findings. Either the effects of the abuse were so detrimental that intervention in these children's lives was necessary years after the event, or these children had been abused more than once or continuously over a period of years. The latter supposition is more strongly supported by the survey's findings. Almost one-sixth of the victims (17.8 per cent) were reported as having been abused prior to the offences which the agencies were treating when the survey was undertaken. Similarly, almost eight in 10 current cases (78.6 per cent) involved abuse that had continued for some years.

On the whole, the children who were victims of sexual abuse presented themselves as average and not severely dysfunctional persons. When asked if the child was currently attending school, the findings of the National Child Protection Survey indicate that in three in four cases (76.1 per cent), the child was attending. In almost three-quarters of the cases (73.2 per cent), the child's intelligence was assessed by the case-worker as being at an average or above average level.

In terms of their family circumstances, a sizeable proportion of the sexually abused children served by child protection workers came from reconstituted families, a high proportion of their 'father-figures' was unemployed, half of the families were on the caseloads of agencies prior to the incidents being reported and one in five had previously been removed by agencies from his or her home. In eight in 10 cases (81.5 per cent C) in all provinces (except Quebec), the child's natural mother was the 'mother-figure' in the home when the offence had occurred. However, it was only half as likely that the natural father was the 'father-figure' (45.2 per cent C). Adoptive or stepfathers (17.5 per cent C) or male common-law partners (13.8 per cent C) filled the paternal role in three in 10 cases. These findings tend to confirm the widely held belief in the child welfare field that reconstituted families served by workers are likely to experience types of problems which are less commonly present in families of partners having first-time marriages or relationships.

A third of the children's mothers (31.3 per cent) were employed and about half of the 'father-figures' (52.7 per cent) had regular jobs. Two in five (42.7 per cent) mothers of sexually abused children received some form of government financial assistance, and of these, three in four (76.8 per cent) were on municipal or provincial welfare. A third of the 'father-figures' (35.5 per cent) were recipients of municipal or provincial welfare.

Half of the families (51.6 per cent C) were on the caseloads of agencies prior to the opening of child sexual abuse cases. As noted in Chapter 7, this experience sharply distinguishes the children served by child protection workers



from those who had contacted the police and hospitals, a high proportion of whom had come to police or hospital attention directly or through professional referrals. This finding underscores a well recognized aspect of the work of child protection services, namely, that they tend to serve families having deeply rooted clusters of problems. The findings are congruent with the results of the 1979-81 review of the locations where victims and offenders lived in Metropolitan Toronto (see Chapter 7). Both sources of information suggest that family composition and neighbourhood of residence may be factors affecting the risk of being sexually abused for some young victims.

In one in five cases (20.1 per cent B) in the National Child Protection and Quebec Surveys, the sexually abused child had been removed by agencies at least once before from his or her home. In two in five families (39.1 per cent), workers had known or suspected that at least one member had previously been sexually abused; in about a half of the cases (47.4 per cent), a family member had been physically abused in the past; and in eight in 10 cases of child sexual abuse (78.6 per cent), the abuse had occurred over an extended period of time.

When these findings are considered together — half of the families being already on agency caseloads, one in five children having previously been removed, the knowledge of previous physical abuse occurring in half of the families, and four in five victims having been abused over a period of time — it is evident that the child protection workers had had numerous previous contacts with many victims and their families. On the basis of their reports, they had recognized that there were severe difficulties in many of these homes. The findings indicate the need for a more careful and thorough assessment of the early signs of risk and danger in relation to child sexual abuse; in this respect, the assessment skills of child protection workers need to be strengthened and/or complemented by those of other workers.

In the review of cases of child sexual abuse referred to provincial registers, it was found that proportionately more minor and fewer serious sexual acts committed against children had been reported. As noted in the next section of this chapter, in two in three cases (64.6 per cent), the workers had known that these children had been sexually abused before the cases had been formally 'opened'. In these situations, it is evident that insufficient protection had been provided in cases where knowledge of abuse was already available to workers. Where this occurred, child protection workers had acted on their belief in the benefits gained by keeping families together, and, by doing so, they may have left the abused child in a position of risk when intervention might have been initiated sooner.

## Initial Assessment

In the national survey, child protection workers were asked for a retrospective assessment of the child's situation before cases were formally opened by agencies. In this regard, it is recalled that many children and their families were already known for other reasons to workers. The workers were asked if

the victimized child had had social, psychological or behavioural difficulties before a report of the incident had been made to the agency. The most frequently indicated *social* problem was parent-child conflict (35.3 per cent). Academic failure (30.1 per cent), disruptive behaviour (22.7 per cent) and truancy (21.3 per cent) were other frequently indicated difficulties.

In three in 10 cases (31.7 per cent), a poor self-image was the most frequently reported *psychological* problem. Other less frequently reported psychological problems were: depression (17.0 per cent); suicidal tendencies (12.8 per cent); health problems (12.1 per cent); and disturbed sleep patterns (11.8 per cent). When child protection workers were asked to indicate the frequency of *behavioural* problems experienced by victims before a report of sexual abuse had been made to an agency, in about one in 10 cases, the workers reported: drug abuse (10.9 per cent), alcohol use (10.4 per cent); or theft (9.9 per cent), as apparent behavioural difficulties. Aggressive behaviour (14.2 per cent) and sexual activity (12.8 per cent) were the more frequently cited behavioural problems.

Since the experience of children who had not been victims of child sexual abuse is unknown in relation to whether they may have had comparable difficulties, no conclusions can be reached about whether the children seen by workers were unusually troubled. The findings show that none was without some form of social, psychological or behavioural problem; some had experienced several problems. Overall, most of the children were not assessed as having had many severe problems before child protection workers had formally intervened in response to an incident of suspected sexual abuse.

When cases are opened, children and their families are expected to be assessed in relation both to the nature of their presenting problems and to their potential strengths. Some families have different coping skills with which to face crises and resolve their difficulties. On the basis of the worker's initial assessment, different types of intervention may be undertaken.

In two in three (64.4 per cent B) of 981 cases in the National Child Protection and Quebec Surveys, workers had known before the cases had been opened by agencies that the children had been sexually abused. For less than one in three (31.2 per cent), they had not known about the incidents, or the abuse had not yet occurred.

Child protection workers in the National Child Protection Survey identified sexual abuse as a presenting problem (although not necessarily the major one which caused the case to be opened) in four in five cases (78.8 per cent). Physical abuse (17.4 per cent) and neglect (18.8 per cent) were cited as problems in about one-sixth of the cases.

Among problems not involving sexual abuse, marital difficulties were reported for half (49.7 per cent) of the families. (In Ontario, 'family problems' were detected in 41.8 per cent of the cases). Over four in 10 families (44.9 per cent) were experiencing conflict between parents and children. When the work-

Table 28.1

**Assessment of Prior Social, Psychological and Behavioural  
Difficulties of Sexually Abused Children  
Identified by Child Protection Workers**

Assessment of Difficulties Experienced by Victims	Sex of Sexually Abused Children	
	Male Victims (n=73)	Female Victims (n=505)
	Non-Accum. %	Non-Accum. %
<i>Social Difficulties</i>		
• Truancy	21.9	21.7
• Academic failures	27.4	30.4
• Disruptive behaviour	27.4	21.9
• Inability to form relationships	23.2	16.5
• Difficulty relating to authority	13.7	14.7
• Negative peer group	17.8	14.1
• Parent-child conflict	30.1	36.0
• Running away from home	13.7	19.3
• Other	4.1	1.8
<i>Psychological Difficulties</i>		
• Poor self-image	40.0	32.1
• Suicidal	9.4	13.7
• Health problems	9.4	12.9
• Bedwetting and soiling	15.1	3.8
• Eating difficulties	7.6	4.4
• General mental health problems	15.1	10.1
• Phobias	7.6	8.5
• General depression	17.0	17.6
• Pre-occupation with incident	13.2	6.9
• Disturbed sleep pattern	18.9	11.5
<i>Behavioural Problems</i>		
• Drug use	7.6	11.7
• Alcohol use	—	11.9
• Sexually active	7.6	13.9
• Prostitution	1.9	4.6
• Aggressive/assaultive	24.5	13.7
• Theft	7.6	10.5

*National Child Protection Survey* (eight provinces and the Yukon, n=578).

ers visited these families, they reported that two in five parents (43.2 per cent) had problems with alcohol or drugs. Roughly the same percentage (39.7 per cent) faced stress due to a lack of housing or money.

In half of the cases (52.5 per cent B), assessments by workers began within the first 48 hours after the cases had been opened. Two-thirds (66.7 per cent B) of the assessments started within the first week. However, one-third (33.3 per cent B) of the sexually abused children waited over a week between the opening of the case and the initial assessment.



Between Interval Referral and Assessment	Male Victims (n=152)	Female Victims (n=829)	Total (n=981)
	Accum. %	Accum. %	Accum. %
Within 24 hours	39.5	48.5	47.2
Within 48 hours	44.7	53.8	52.5
Within one week	59.2	67.9	66.7
Within one month	68.4	76.8	75.6
Over one month	70.4	83.4	83.1

**In the Committee's judgment, these delays in providing care are unacceptable. They may be extremely harmful to the child, they extend the period of risk and they run counter to the known policies of child protection services.**

An outstanding characteristic of the sexual abuses documented in the National Child Protection Survey is their duration. In over three-quarters of the cases (78.6 per cent), the abuses were not isolated incidents. The period of time involved ranged from less than one month to 13 years. The sexual abuse had gone on for less than six months in only 13.7 per cent of the cases. One in four children (24.0 per cent) had been subjected to abuse for 6-12 months; and one in 10 (10.4 per cent) was abused for 13-24 months. Almost one in four victims (24.2 per cent) had suffered abuse for three years or longer.

Duration of Sexual Abuse	Male Victims (n=73)	Female Victims (n=505)
	Per cent	Per cent
Under 6 months	19.2	12.9
6 – 12 months	16.4	25.2
1 – 2 years	1.3	11.7
3 – 5 years	11.0	16.0
6 or more years	11.0	8.5
Not Reported	41.1	25.7

In the Quebec survey, it was found that about one in eight cases (12.4 per cent) was an isolated incident of sexual abuse. One-ninth (10.7 per cent) of the children were abused for six months or less; 5.0 per cent were abused for 7-11 months. One child in 20 had been victimized for a period between one and two years and, for one in eight (12.7 per cent), the abuse had continued longer than two years.

In making their initial assessments, child protection workers encountered a broad range of attitudes held by victims and their parents. Three in 10 children (31.7 per cent) expressed negative feelings towards offenders. Over one-quarter (27.7 per cent) wanted to leave their homes, while almost another quarter (23.9

per cent) wished to stay. One in four victims (24.7 per cent) wanted his or her family to stay together.

Almost half the offenders (47.4 per cent), most of whom were 'father figures', did not want to leave their homes and one-quarter (26.0 per cent) wished to maintain family unity. Over one-third of the mothers (34.3 per cent) preferred to have the offenders remain and to have their children stay with them (33.4 per cent). One in four mothers (26.8 per cent) rejected the offenders.

When child protection workers open cases involving child sexual abuse, the findings indicate that they were confronted with an array of contrasting attitudes held by victims and family members, and that in this respect, there was no standard pattern of customary attitudes or behaviours. Families served by workers came from a variety of backgrounds, faced different difficulties and reacted differently to incidents of child sexual abuse. **The findings underscore the necessity for child protection workers to be well trained in methods of assessment and intervention, since in relation to the problems encountered, no single set of professional techniques is likely to suffice to serve the diverse needs of sexually abused children.**

## Services Provided

The two principal methods used by child protection workers to assist abused children are: direct work with children and their families; and coordinating the referrals of clients to other services. Services directly provided to sexually abused children may include: short or long-term counselling with individuals, couples or families; group therapy; crisis intervention; parent education; and provision of transportation or accompanying clients to court or hospital. The second type of service provided may include: consultation with other professionals involved in cases; meetings with foster parents; advocacy for clients; referral of clients to appropriate resources; mediation between clients and organizations; serving as witnesses at court; and professional training and organizational meetings.

## Medical Examination

About one in two children (52.6 per cent C) in the National Child Protection and Ontario Surveys had been medically examined, either at the behest of child protection workers or these visits had been sought by the children themselves, or by their parents or guardians.

In the Quebec survey, 107 (26.6 per cent) children had had a medical examination (three in 10 girls, 29.9 per cent; one in eight boys, 12.7 per cent). Of the 285 children in the National Child Protection Survey who had been medically examined, two in five (41.1 per cent) had been seen by family doctors and somewhat fewer by hospital abuse unit members (25.6 per cent) or by emergency room personnel (19.3 per cent). Information for Ontario revealed

Medically Examined	Male Victims		Female Victims		Total	
	No.	%	No.	%	No.	%
Yes	54	42.5	490	54.0	544	52.6
No	63	49.6	347	38.2	410	39.6
Unknown	10	7.9	71	7.8	81	7.8
TOTAL	127	100.0	908	100.0	1035	100.0

that 88.4 per cent of the 457 victims had been examined by doctors, 1.2 per cent by nurses and 5.4 per cent by both a doctor and nurse.

Most of the medical care reported to have been received by sexually abused children had not been initiated by child protection workers. Workers were asked to list which types of services had been contacted and whether these contacts had been made by telephone, involved meetings or had led to a full medical assessment.

Proportion of Victims Having Assessment & Services Provided by Physicians/Hospitals Initiated by Child Protection Workers	Male Victims	Female Victims
	Non-Accum. %	Non-Accum. %
Telephoned	20.5	27.3
Meeting	23.3	30.7
Full joint investigation	21.9	26.9

Of children who had been sexually abused, a medical examination had been initiated for one in four girls (26.9 per cent) and one in five boys (21.9 per cent).

When the types of sexual acts committed against children are considered (see Chapter 7), many of which involved vaginal or anal penetration, it is evident that medical care was not provided for a substantial proportion of these children. In its interviews with workers, the Committee learned that medical examinations had not been sought in these instances because: the assaults had occurred sometime in the past; or it was felt by workers that a medical examination might heighten the trauma already experienced by victims.

In light of its findings on sexually transmitted diseases (see Chapter 33), the Committee considers it essential that all sexually abused children be medically examined where it is suspected that vaginal and/or anal penetration has been attempted or has occurred. However cogent other reasons may appear to be at face value, in the Committee's judgment **the protection of the physical**



well-being of these children must be assured; the presumption that no harm may have been incurred because a sexual act was completed in the past is invalid.

### Police Services

On average, three in four (74.7 per cent) sexually abused children served by workers were known to the police. About one in 10 cases had been referred to agencies by the police and between a fifth and a quarter (22.6 per cent) had had contacts with the police which victims, their families or other persons had initiated. About half (46.0 per cent) of the contacts with the police had been made by workers.

Contacts With Police	Male Victims (n=73)	Female Victims (n=505)
	Per Cent	Per Cent
Case referred by police	8.2	9.1
Other contacts with police	12.3	20.8
Agency initiated referral	52.1	45.1
None, unknown	27.4	25.0

In one in six (15.7 per cent) contacts with the police, the initial assessment of the child had been jointly undertaken by workers from both public services.

Following the initial assessment, the nature of the contacts between workers and the police included telephone conversations, meetings and jointly undertaken investigations.

Proportion of Victims Having Assessment & Services Provided by Police & Child Protection Workers	Male Victims	Female Victims
	Non-Accum. %	Non-Accum. %
Telephoned	27.4	26.9
Meeting	30.1	31.1
Full joint investigation	28.8	36.2

In about one in three cases (35.3 per cent), a jointly undertaken assessment by police and child protection workers was made of the child's situation.

### Other Services

In addition to medical and police services, the other types of services most frequently turned to were school staff and mental health workers. Crown prosecutors were less frequently consulted and voluntary community associa-

tions such as sexual assault centres were contacted in only a small proportion of cases. Few of the contacts with other services led to a jointly undertaken assessment and investigation.

Other Services Contacted	Type of Consultation (n=578)		
	Telephoned	Meeting	Full Investigation
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Crown prosecutor	9.3	9.5	2.4
School staff	18.2	25.6	7.1
Mental health worker	10.5	13.5	4.3
Voluntary community agency	4.3	3.8	0.5

In relation to the types of public and community services contacted by child protection workers in cases involving child sexual abuse, the findings indicate that an intervention model of interdisciplinary co-operation was evolving, but it is evident that it had not yet become a standard operating practice. In some instances, the use of allied professional services and other community resources was sporadic. These contacts infrequently led to a full assessment initiated and co-ordinated by child protection workers.

### Interviews with Victims and Family Members

The results of the National Child Protection and Quebec Surveys indicate that workers interviewed victims (79.0 per cent B) and mothers (78.2 per cent B) in four in five cases. (Reasons for not interviewing victims may include the lack of the child’s verbal ability or the child’s physical absence). In about half of the cases (45.7 per cent B), non-offending fathers were interviewed — in other words, almost all of this group. The victims’ siblings were spoken to in two in five cases (42.3 per cent B). Overall, less than half (48.2 per cent B) of the offenders were interviewed by workers.

Persons Interviewed by Child Protection Workers	Male Victims (n=152)	Female Victims (n=829)
	Per Cent	Per Cent
Child (victims)	73.7	79.9
Mother (– figure)	64.8	78.7
Father (– figure)	41.5	46.3
Siblings	39.5	42.8
Offender	41.5	49.5

The findings indicate an uneven and incomplete assessment of the situations of victims and their families upon which to develop subsequent treatment and intervention plans. In cases reported for nine provinces, interviews had not been held with: one in five victims; one in five mothers; one in two offenders; and three in five of the victims' siblings.

The findings indicate serious deficiencies in the scope and thoroughness of the assessments carried out by child protection workers. It is known, for instance, that children living in the same family other than the victim may also have been sexually abused, as the survey's findings document. In the Committee's judgment, it is unclear how an adequate and effective program of treatment and intervention can be conceived and carried out when a full assessment has not been made involving all concerned members of a family, including siblings either at risk or who may have already been victims.

In the Committee's judgment, these significant findings imply a major deficiency in providing protection for sexually abused children served by child protection workers. For many of these children, there is an insufficient assessment of their situation to serve as the requisite basis upon which to mount an effective program for their immediate and long-term protection.

## Psychotherapeutic Services Provided

Child protection workers were asked to specify the types of services which they themselves provided for sexually abused children. In their replies, workers distinguished sharply between counselling and assessment interviewing and the provision of other services. In the National Child Protection Survey, half of the victims (53.5 per cent) and one in five offenders (20.6 per cent) were reported to have received counselling from workers. Fewer than one in four families (22.8 per cent) had been involved in some form of family therapy. The findings from the Ontario Survey were comparable, with fewer than one in four children (22.3 per cent) and one in eight offenders (12.7 per cent) reported as having been counselled by child protection workers.

Specialized services, such as group therapy, marital therapy or play therapy were infrequently utilized. Although a broad range of potential psychotherapeutic services could be provided in relation to the needs of victims and their families, the findings indicate that counselling was the most commonly provided service and that even this means of intervention was not being extensively used.

Child protection workers identified social and environmental problems in four in 10 families being served. As documented in the National Child Protection and Ontario Surveys, one in four families (23.2 per cent C) received some form of financial assistance; one in nine (11.1 per cent C), legal assistance; and one in 14 (6.9 per cent C), medical care.



**Table 28.2**

**Provision of Psychotherapeutic Services to  
Sexually Abused Children by Child Protection Workers**

Type of Service Provided	Recipients of Services		
	Victim (n=578)	Offender (n=578)	Family (n=578)
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Individual counselling	53.5	20.6	28.0
Group therapy	9.2	1.4	2.6
Family therapy	10.9	6.9	22.8
Marital therapy	—	6.2	5.5
Victim/offender counselling	3.5	3.5	—
Psychotherapy	4.2	4.5	1.7
Play/art therapy	4.8	—	0.7
Crisis intervention	11.6	5.5	9.5
Addiction counselling	0.5	5.0	3.6
Child management	—	2.1	9.2
Self-Help	0.4	0.9	2.8
Hot-Line	0.7	0.2	0.7
Psychological testing	18.8	10.0	5.5
Other	4.8	1.2	2.8

*National Child Protection Survey* (eight provinces and the Yukon).

## Number of Workers Providing Services

That the nature and quality of the services rendered by child protection workers are instrumental in providing effective assistance is a principle accepted alike by laymen and professionals. In this regard, it is well recognized

Number of Workers Involved	Male Victims (n=73)	Female Victims (n=505)
	Per Cent	Per Cent
One	31.5	39.8
Two	35.6	29.5
Three	13.7	10.9
Four	5.5	6.3
Five	4.1	3.8
More than Five	0.4	3.8
Unknown	9.2	5.9

that optimal care in child welfare, where feasible, should involve as few professional workers as possible who are working on behalf of clients. In this respect, the findings of the National Child Protection Survey indicate that most, but not all, sexually abused children were well served. About four in 10 victims (38.7 per cent) were served by one child protection worker.

Transfers of cases between intake and long-term service workers occur routinely: 30.2 per cent of the clients were assigned to two workers. Over two-thirds of the victims and their families can be considered not to have been subjected to multiple transfers. Nevertheless, one-quarter of the clients (25.6 per cent) were transferred among three or more workers. The Committee learned that the rates of staff turnover in child protection agencies were high and this fact likely accounted for the frequent transfer of some of the clients.

## Removal and Placement of Children

In seeking to assist sexually abused children, child protection workers are caught in the dilemma of judging which of several courses of action may best serve the child's interests and needs and protect his or her well-being. Their legal and social mandate is to protect children from harm — in this instance, sexual abuse. The only certain method to accomplish this duty, namely, to ensure that children are not abused again, is to remove them physically from their homes (where abusers are residents) and break off unsupervised contacts between victims and offenders. The Committee was told by experienced workers of the immense pressure that the community often placed on them to apprehend children. At the same time, child protection workers are aware of the harms incurred by forcing children to leave their homes. The established policy of many agencies is, whenever possible, to keep families together. It is widely believed by child protection workers that children who are taken from their families are likely to view this intervention as a form of punishment, may resent it or feel it is no more than they deserve. It has been suggested in the child welfare literature that the removal of the child may be more harmful than the abuse the child sustained.

In theory, the solution to this dilemma is simple: the abuser should be removed from the home. In practice, factors such as recriminations by the remaining parent, the possible return of the offender, and, above all, the lack of statutory authority under child welfare legislation enabling the expulsion of reluctant abusers from their homes effectively hinder the efforts of child protection agencies in this regard. To attain this end, child protection workers must seek recourse to the criminal justice system.

In the course of its review, the Committee found instances where child protection workers and the police worked effectively together on behalf of sexually abused children. However, close collaboration resulting in jointly undertaken assessments and investigations is still the exception; it is not an established practice. Many child protection workers resent what they perceive to be the brusque intrusion of the police in the sensitive domestic problems of fami-

lies, an intervention which is often seen as being more harmful than beneficial. While these sentiments are more matters of belief than of documented fact, some workers act upon them in reaching decisions concerning the disposition of sexually abused children.

In Chapter 29, *Intervention Strategies*, a review is provided which compares the procedures and outcomes resulting from philosophically different assessment and intervention approaches adopted to assist sexually abused children. In the remainder of this chapter, an overview is given of the actions taken by child protection workers following their assessment of the needs of these children.

### Initial Removal of the Child

In the National Child Protection and Ontario Surveys, it was found that during the period immediately following an initial assessment by an agency's staff, about half of the children (47.7 per cent C) were removed and about half (48.0 per cent C) remained at home. In contrast, about one in five (18.6 per cent) victims in Quebec was removed from his or her home. For nine provinces and the Yukon, about two in five children (38.1 per cent C) were placed in an agency's facility and one in 10 (9.7 per cent C) was placed with relatives. The siblings of victims were also removed from home in one in 15 cases (6.5 per cent C).

Initial Placement of Children	Male Victims (n=127)		Female Victims (n=908)		Total (n=1,035)	
	No.	Non-Accum. %	No.	Non-Accum. %	No.	Non-Accum. %
Child at home	67	52.8	430	47.4	497	48.0
Child in care	46	36.2	348	38.3	394	38.1
Child with relatives	5	3.9	95	10.5	100	9.7
Siblings in care	5	3.9	62	6.8	67	6.5
Other	8	6.3	71	7.8	79	7.6

The workers' decisions to remove children from their homes were based on a number of considerations, including: the child's age; the frequency of the abuse; the family environment; other problems experienced by the victims; the distance between the child's residence and the agency's offices (affecting the time taken by workers to contact victims and their families); and other factors. **The findings of the National Child Protection Survey indicate that there was no relationship between the agency's decision to remove or not to remove children and the types of sexual acts committed against them. Children who had been sexually fondled were as likely to have been apprehended as children who had been victims of vaginal or anal intercourse (regression analysis,  $r^2=0.0028$ ). Conversely, children who had been victims of more serious sexual acts were as likely to be left in their homes as to have been removed. This finding indicates that a sizeable proportion of sexually assaulted children is left in a position of unknown risk.**



**This finding warrants the immediate and sharp revision of child protection practices in relation to serving these children, and underscores the need for more effective assessments of these types of cases.**

### Initial Removal of Suspected Offender

In one in four cases (27.8 per cent C) in the National Child Protection and Ontario Surveys, child protection workers were uncertain or did not know what had happened to offenders who lived in the victims' homes. This finding may well be a result of incomplete reporting of information in agency records. In the Committee's view, however, it is an omission of significant information which should be included in all child protection records concerning sexually abused children.

In about one in three cases in nine provinces and the Yukon (36.4 per cent C), the suspected offenders remained at home and for another third (34.9 per cent C), the offenders left home following an agency's initial assessment.

Initial Removal of Offender	Male Victims (n=127)	Female Victims (n=908)	Total (n=1,035)
	Per Cent	Per Cent	Per Cent
Offender at home	24.4	38.1	36.4
Offender left	33.9	36.1	34.9
Other	3.1	1.8	1.9
Unknown	38.6	24.0	26.8
TOTAL	100.0	100.0	100.0

Findings comparable to those obtained for victims were found concerning the types of sexual acts committed and whether offenders stayed at or left their homes (regression analysis,  $r^2=0.0027$ ). There was no significant relationship between the removal of offenders and the types of sexual acts committed.

**These important findings concerning the removal and non-removal of victims and offenders in relation to the sexual acts committed raise serious questions about the principles and adequacy of assessment practices of child protection services. They reflect the unsettled state of the field in relation to the different intervention strategies adopted. Many of the intervention strategies adopted are manifestly not based on a judgment concerning the gravity of the sexual assaults committed. Children who had been victims of vaginal or anal intercourse were as likely to be left at home with resident offenders as to have been removed. In its recommendations given elsewhere, the Committee considers the social policy and legal significance of these findings in relation to the need to afford better protection for sexually abused children served by child protection workers.**

## Living Arrangements For Children Following Assessment

The findings of the National Child Protection Survey indicate that several different types of living arrangements occurred after child protection assessments had been completed. These included: one in five cases (20.2 per cent) in which the non-offending parent and the child continued to live together; one in five cases (20.8 per cent) in which all family members separated; about one in five (18.9 per cent) in which both parents continued to live together without the child; and for about two in five cases, other options were taken.

Living Arrangements After Assessment	Male Victims (n=73)	Female Victims (n=505)	Total (n=(578)
	Per Cent	Per Cent	Per Cent
Family together	13.7	15.1	14.9
Parent and child	23.3	19.8	20.2
Parents together	8.2	20.4	18.9
Offender and child	4.1	1.0	1.4
Family apart	26.0	20.0	20.7
Other*	19.2	18.0	18.2
Unknown	5.5	5.7	5.7
TOTAL	100.0	100.0	100.0

\* "Other" includes situations in which the offender was not a family member.

## Time in Care

The information concerning the length of time that children removed from their homes spent away from them does not provide an accurate assessment of the usual duration, since a number of the cases documented in the National Child Protection Survey were still open or services were being provided when the information was obtained.

Time in Care	Male Victims (n=73)	Female Victims (n=505)	Total (n=578)
	Accum. %	Accum. %	Accum. %
Not in care	100.0	98.4	99.3*
Less than 1 week	65.8	64.7	64.9
1 – 4 weeks	61.7	61.0	61.1
1 – 3 months	49.3	50.3	50.2
4 – 6 months	39.7	42.8	42.4
7 – 11 months	24.7	29.1	28.5
1 – 2 years	19.2	19.8	19.7
3 years	2.7	4.0	3.8
More than 3 years	2.7	1.8	1.9

\* Information missing for 0.7 per cent.

About two in five children (38.9 per cent) were reported to have been in care for less than four weeks. Two in five (42.4 per cent) had been in care for four months or longer.

## Present Living Arrangements

Of children removed from their homes when the National Child Protection Survey was undertaken, one in three (30.6 per cent) was in foster care, over two in five (44.5 per cent) were living with their families and about one in four (26.3 per cent) lived with families from which the resident offender had departed. About one in five children (18.2 per cent) lived with families that included offenders.

Present Living Arrangements of Victims	Male Victims (n=73)	Female Victims (n=505)	Total (n=578)
	Accum. %	Accum. %	Accum. %
Foster care	39.7	29.3	30.6
On own	1.4	6.5	5.9
With relatives	2.7	7.3	6.7
With family without offender	28.8	25.9	26.3
With family with offender	20.6	17.8	18.2
Other	2.7	5.3	5.0
Unknown	4.1	7.9	7.3
TOTAL	100.0	100.0	100.0

In Quebec, somewhat different living arrangements were found in the survey conducted by Le Comité de la protection de la jeunesse. One child in 10 (10.7 per cent) was in foster care and one in four (24.8 per cent) had remained with his or her family. Of the latter, virtually all were living with offenders. In relation to the findings of both surveys, it is recalled that since some of the children were still being cared for by agencies, the final place of residence might differ from those reported as the "present place of residence".

## Status of Case

Although the benefits of short-term therapy (i.e., three months or less) are gaining recognition in the field of child welfare, child protection workers also are aware that sexual abuse is a deeply rooted problem which may require a considerable amount of casework to undo its effects and to prevent, if possible, reoccurrences. The findings from the National Child Protection and Quebec Surveys illustrate this awareness: over three-quarters of the cases (77.9 per cent B) were open when the Committee obtained its information.



Status of Case	Male Victims (n=152)	Female Victims (n=829)	Total (n=981)
	Accum. %	Accum. %	Accum. %
Open	83.5	76.8	77.9
Closed	15.8	22.3	21.3
Unknown	0.7	0.9	0.8
<b>TOTAL</b>	100.0	100.0	100.0

Although the reporting forms submitted to the Ontario Child Abuse Register specify the “current” status of a case, information was not provided on this point for two in five cases (40.9 per cent). Of the remainder, one in five (21.0 per cent) was closed and about two in five (38.1 per cent) were open.

Information on the reasons for closing cases was sought in the National Child Protection Survey. For the 188 closed cases, the most frequently cited reason was that sufficient counselling had been provided (36.2 per cent). Of this group, the most frequent reason cited was that sufficient counselling had been rendered with the result that the clients no longer needed assistance (36.2 per cent). One in five cases (21.8 per cent) had been closed because the agencies did not receive the clients’ co-operation. Less frequently, cases were closed because families had moved away (13.8 per cent) or had been referred to other service organizations (12.8 per cent). The least frequently cited reason was that children had become too old to be provided with child protection services (10.6 per cent).

## No Court Involvement

Of the cases of child sexual abuse in which there was no court involvement, the most commonly cited reason, one given for two in three cases (68.2 per cent), was that the agency’s plan for the client precluded taking this course of action. In about a third of the cases (33.0 per cent), insufficient evidence was reported as the basis for not seeking a court hearing. Sometimes, more than one justification was listed. Among the less frequently stated reasons were: cases were before criminal courts (16.5 per cent); the victim or a witness refused to testify in court (10.6 per cent); and child protection workers believed that a court appearance would place too much stress on the child (9.4 per cent).

## Court Involvement

The results for 1438 cases from all provinces and the Yukon indicate that in one in three cases (34.3 per cent A) charges were laid, in about two in five cases (42.9 per cent A) no charges were laid and this information was unknown by workers for one in five cases (22.8 per cent A).

Criminal Charges Laid	Male Victims		Female Victims		Total	
	No.	%	No.	%	No.	%
Yes	64	31.1	429	34.8	493	34.3
No	82	39.8	535	43.4	617	42.9
Unknown	60	29.1	268	21.8	328	22.8
<b>TOTAL</b>	<b>206</b>	<b>100.0</b>	<b>1,232</b>	<b>100.0</b>	<b>1,438</b>	<b>100.0</b>

Somewhat different findings emerge when the information for Quebec is considered separately and only the experience of the other nine provinces and the Yukon is drawn upon in relation to the proportion of cases in which there was intervention by the courts. In about one in five cases (18.4 per cent C), this information was not reported in the National Child Protection and Ontario Surveys.

Court Involvement	Number	Percentage
No Court Involvement	302	29.2
Child Welfare Court	138	13.3
Criminal Court	253	24.4
Child Welfare and Criminal Courts	152	14.7
Not Reported	190	18.4
<b>TOTAL</b>	<b>1035</b>	<b>100.0</b>

**In three in 10 cases (29.2 per cent C), there was no court involvement. Between one in seven and one in eight cases (13.3 per cent C) proceeded solely to child welfare courts and one in four (24.4 per cent C) exclusively involved hearings before criminal courts. In one in seven cases (14.7 per cent C), the cases were brought before both child welfare and criminal courts. In the Quebec Survey, information was not reported concerning court involvement for one in two cases (49.6 per cent). For one in three cases (34.0 per cent), there was no court involvement, one in 10 (10.2 per cent) proceeded to the Youth Court, one in 25 (4.0 per cent) to the Court of Sessions, and 2.2 per cent involved hearings before both types of courts.**

Except for Quebec, of cases involving child sexual abuse documented for nine provinces and the Yukon, the criminal justice system was more often resorted to than was the civil justice system (child welfare courts). Of the one in two cases (52.4 per cent C) having court hearings, three in four (74.6 per cent C) proceeded to criminal courts and one in two (53.4 per cent C) to child welfare courts. As noted, a portion of the cases came before both levels of court.

# Child Welfare Court

The Committee learned from its meetings with many child protection workers across Canada that most agencies prefer not to seek court intervention in relation to child sexual abuse. As documented in the National Child Protection and Ontario Surveys, this option was, however, followed in about one in two cases (52.4 per cent C). When this course of action is taken by child protection workers, it is because they recognize that a child is in need of certain types of services or of a period of guardianship, means which may not otherwise be realized, but only attained through the auspices of the Court.

It is widely believed in the child welfare field that most cases coming before Child Welfare Courts represent a failure of all parties involved to come to an agreement to co-operate in the child's best interests. In these instances, resorting to the courts may be the only avenue available whereby workers feel they can work effectively with hostile or reluctant families. In this regard, in the National Child Protection Survey, workers reported that one in four suspected offenders (27.0 per cent), one in five mothers (21.8 per cent) and one in six victims (17.1 per cent) were hostile to the initial intervention by workers in their affairs.

## Child Present in Court

Although court proceedings may vitally affect their lives, the findings of the National Child Protection Survey found that in about two in three cases (64.5 per cent), these children were reported not to have appeared at any time in court. In about a third of the cases (32.4 per cent), children did appear in court.

Child Present in Child Welfare Court	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Yes	27.8	33.2	32.4
No	72.2	63.3	64.5
Unknown	—	3.5	3.1
TOTAL	100.0	100.0	100.0

Some of the children who did not appear in court may have been either too young or incapacitated physically and mentally to experience the stress of making such an appearance. However, the findings obtained by the Committee in relation to the social, psychological and behavioural difficulties experienced by sexually abused children served by child protection workers indicate that many of these children who were fit to appear were not given the opportunity to do so. The Committee regards this practice as disturbing: it precludes these children from directly giving their accounts to judges, and in turn, prevents judges



from directly forming their own assessments about the emotional and physical state of the child.

### The Child Represented in Court

At Child Welfare Court hearings, no information was reported for one in four cases (26.3 per cent) documented in the National Child Protection Survey. One child in eight (12.2 per cent) was represented by no one. About two in five (38.6 per cent) were represented by child protection workers. One in nine children (11.4 per cent) was represented by a lawyer.

Child Represented in Child Welfare Court	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Lawyer	3.0	12.7	11.5
Child protection worker	42.4	38.0	38.6
Other	6.1	12.2	11.4
No representative	21.2	10.9	12.2
Unknown	27.3	26.2	26.3
TOTAL	100.0	100.0	100.0

How these findings are interpreted depends upon the weight assigned to having a professional trained in legal affairs — but not usually child welfare — representing children in court. In framing child welfare statutes, it appears that legislators acted on the assumption that child protection agencies would work towards ensuring the best interests of children, and, therefore, would speak effectively for them in court. Recently, there has been a growing and more widely held belief that children should be able to present their own views, or for them to be represented by attorneys. If the latter philosophy is adopted, the findings presented may be viewed with concern.

### Reactions to Court Proceedings

Child protection workers completing the National Child Protection Survey were not aware of their client's reactions to child welfare proceedings in one in four cases (25.6 per cent). The workers listed a number of varied responses for the rest of the children. (Children who did not appear in court are included as the court process affected them as well). Undoubtedly like many persons unexperienced in court procedures, it is not surprising to learn that many of the children exhibited anxious and excited reactions.

Child's Reaction to Child Welfare Court	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Agitated	6.1	15.2	14.1
Anxious	21.2	23.6	23.3
Depressed	18.2	15.3	15.6
Indifferent	12.1	8.3	8.8
Excited	—	2.2	1.9
Other	3.0	11.8	10.7
Unknown	39.4	23.6	25.6
TOTAL	100.0	100.0	100.0

One in four children (23.3 per cent) was adjudged by workers to have been nervous about the court hearing; depression was the next most common response (15.6 per cent); and one in seven (14.1 per cent) was agitated or upset. The workers believed that about one in three children (29.7 per cent) was traumatized by being involved in the proceedings of a child welfare court. The remainder were indifferent (8.8 per cent), excited (1.9 per cent) or evinced a number of other reactions (10.7 per cent).

### Proportion of Children Harmed by Child Welfare Court Intervention

In interpreting these findings about the reactions of sexually abused children involved in proceedings before a child welfare court, an important consideration is whether the child protection workers believed that these young victims had been harmed by this intervention. During its review, the Committee learned that it was a widely held belief in the fields of child welfare and family law that the involvement of children in court proceedings is harmful to children. Precedents established elsewhere, such as in Israel where the child is represented by a child advocate in court, were cited as justification for this position. In this regard, the Ministry of Justice of the Government of Israel informed the Committee that no studies have been undertaken for that nation which assess the application of this procedure and its consequences for the children involved.

In order to determine whether children were believed to have been harmed by their involvement in child welfare court proceedings, the Committee asked child protection workers for their judgment on this matter concerning cases they had served which had proceeded to court. The Committee recognizes that this type of information may not accord directly with whether these children had in fact been harmed. The findings, however, were based on the informed judgment of child protection workers who presumably had worked closely with these children and their families, who had been responsible for seeking court

intervention, and who, in many instances, had represented their interests at court hearings. As such, the findings represent the informed judgment of child protection workers, who it could be expected, would be deeply concerned and well appraised of the risks involved for children under their care.

Proportion of Children Harmed by Involvement in Child Welfare Court Proceedings	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Harmed	6.1	5.2	5.3
Not harmed	39.4	48.0	47.0
Unknown	54.5	46.7	47.7
TOTAL	100.0	99.9*	100.0

\*Rounding error

In the National Child Protection Survey, child protection workers were asked whether in their judgment the children involved in proceedings of child welfare courts had been harmed. In half of the cases (47.7 per cent), this information was unknown. Considering the crucial significance of this type of information, its lack of documentation represents a serious omission in child protection records. It is recalled that, in assembling information for the National Child Protection Survey, both records of agencies and the experience of workers were drawn upon; the findings did not exclusively derive from the former source.

For about half of the cases (47.0 per cent), it was reported that the children involved in court proceedings had not been harmed. Overall, child protection workers reported that about one in 19 children (5.3 per cent) had been harmed by this form of legal intervention.

**When the findings concerning the reported reactions of children and the assessment of harms incurred are considered together, it appears, based on the informed judgment of child protection workers, that while considerably more children were anxious or upset by court proceedings, few were believed to have suffered any lasting harms resulting from this process.**

**Until more complete and detailed documentation is available, the Committee accepts these findings as constituting the informed opinion of professional workers who were deeply concerned about children's well-being. The findings indicate that for well over nine in 10 children, there was no justification in relation to the potential harms incurred to believe that they were likely to have been seriously harmed by court intervention on their behalf. The findings given subsequently concerning the reactions of children to the proceedings of criminal courts reinforce this conclusion.**



## Criminal Court

The information about the experience of sexually abused children whose cases were brought to criminal court is limited, since as noted in Chapter 6, *Occurrence of the Problem*, only a small proportion of the persons who were victims of sexual offences as children had contacted or been served by child protection services. Of those who came to the attention of child protection services, many were not involved in court proceedings, and of those who were, cases may have been heard before child welfare courts, criminal courts or both types of courts. As a result of this selective, winnowing process, only a portion of the cases initiated by child protection services came to the attention of the criminal courts.

The information available from child protection workers about the experience of children served by agencies whose cases involved criminal court hearings is further limited by an aspect of child protection practice about which the Committee had been unaware before it undertook its review. The findings indicate that, in a sizeable number of cases involving criminal court hearings, child protection workers were either misinformed, or did not know what had happened to the children in their care or to the suspected offenders who had been charged. It is recalled that the cases known to child protection services having any form of court intervention, three in four had resulted in criminal court hearings. In this regard, the lack of information by child protection workers about what happened to a sizeable proportion of these children constitutes a serious omission in the scope of the services provided for these children and in the follow-up of children in their care.

## Reasons For Not Laying Charges

In a total of 480 cases drawn from the National Child Protection and Ontario Surveys, criminal charges were not laid against suspected offenders. Among these cases, the most commonly cited reason why charges were not laid was lack of evidence (72.7 per cent C). In about one in five cases (18.7 per cent C), the offender's willingness to receive treatment was reported as a reason for not laying charges. For one case in six (16.7 per cent C), a person — child, witness or spouse — was unwilling to testify. In about one in eight cases (12.1 per cent C), the credibility of the complainant or witness was questioned, and unlike the confirmation of cases by child protection workers, this occurred in cases involving boys three times more often than those involving girls.

Elsewhere in the Report, the Committee makes recommendations with respect to the admissibility of children's evidence in court hearings. The findings for nine provinces (except Quebec) show that the age of the child was given as the reason for not laying charges in only one in 19 cases (5.6 per cent C) in this survey.

Reasons Charges Not Laid	Male Victims (n=59)	Female Victims (n=421)	Total (n=480)
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Age of child	10.2	5.0	5.6
Offender unknown	5.1	5.2	5.2
Lack of evidence	71.2	72.9	72.7
Credibility questioned	28.8	9.7	12.1
Unwilling to testify	23.7	15.7	16.7
Offender warned	8.5	3.3	4.0
Offender seeking treatment	23.7	18.1	18.8
Other	28.8	39.9	38.5
Unknown	15.3	10.5	11.0

### Sexual Acts Committed and Charges Laid

Two types of statistical analysis were undertaken to determine the association between the types of sexual acts committed against children served by child protection services and whether charges were laid against suspected offenders. In both instances, the findings were drawn from the National Child Protection Survey. In the first analysis, a multiple regression correlation, it was found that when all types of sexual acts were considered, there was no statistically significant relationship between these acts and whether criminal charges had been laid against suspected offenders (regression coefficient,  $r^2=0.0386$ ).

In the second statistical analysis, a more detailed review was made involving the more serious acts where vaginal and/or anal penetration by a penis had been committed against children served by child protection workers. Acts of this kind had been committed against 183 children, of whom information about whether charges had been laid was unknown for 14 cases. The findings given here are for 169 children.

Type of Sexual Act Committed against the Child	No Charges Laid		Charges Laid	
	No.	%	No.	%
<i>Male Victims</i> Anal penetration with penis	8	47.1	9	52.9
<i>Female Victims</i> Anal penetration with penis	2	28.6	5	71.4
Vaginal penetration with penis	60	45.1	73	54.9
Anal and vaginal penetration by penis	2	16.7	10	83.3

The findings serve to extend results of the regression analysis. Although the number of cases is small where both vaginal and anal penetration by a penis had occurred, charges were laid in five in six of these cases (83.3 per cent). The next category where charges were most frequently laid was the anal penetration by a penis of female victims. Slightly over one half (54.9 per cent) of the cases involving vaginal penetration by a penis resulted in charges being laid.

In instances involving anal penetration by a penis, charges were more likely to be laid in incidents in which girls (71.4 per cent) than boys (52.9 per cent) had been victims. When a distinction is made for girls who had been victims of vaginal and anal acts of penetration by a penis (double-counting the few instances where both acts had been committed), then charges were considerably more often laid in instances where anal penetration by a penis (78.9 per cent) had occurred than those where vaginal penetration by a penis (57.2 per cent) had been committed.

These findings parallel those obtained in relation to the types of sexual acts committed against children reported by child protection workers to provincial child abuse registers. **These findings indicate that many serious sexual offences known to child protection workers had not been reported to registers or resulted in charges being laid and, in fact, that there was an inversion from the results which might have been expected in relation to two of the most serious sexual acts — vaginal and anal penetration by a penis.** Some of the child protection workers serving these sexually assaulted children, it appears, regarded acts of anal penetration by a penis as a more serious offence than acts of vaginal penetration by a penis. In terms of the potential long-term physical harms to girls of becoming pregnant or contracting physically damaging sexually transmitted diseases, there can be no doubt that the latter acts constitute a graver danger for children than do the former.

In the Committee's judgment, the professional grounds upon which decisions of this kind are made, and the decisions themselves, are wholly unacceptable. There can be no doubt that the protection afforded children in these situations must be strengthened.

## Guilty Plea

Of the cases in the National Child Protection Survey for which information was available, one in three (33.0 per cent) suspected offenders pleaded guilty, about one in four (23.7 per cent) did not and child protection workers did not know the outcomes of the remainder of the cases appearing in criminal court (43.3 per cent).



Guilty Plea	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Yes	50.0	31.0	33.0
No	20.0	24.1	23.7
Unknown	30.0	44.8	43.3
TOTAL	100.0	99.9*	100.0

\*Rounding error

## Preliminary Hearing

At the preliminary criminal court hearings of suspected offenders, about one in five (19.1 per cent) was not committed to trial, one in three (32.5 per cent) was, and about one in six (17.5 per cent) was referred for psychiatric and/or psychological assessment. In three in 10 cases (30.9 per cent), workers did not know the trial status of suspected offenders in relation to the children whom they had been serving.

Results of Preliminary Hearing	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Committed to trial	20.0	33.9	32.5
Not committed to trial	20.0	19.0	19.1
Psychiatric assessment	5.0	19.0	17.5
Unknown	55.0	28.1	30.9
TOTAL	100.0	100.0	100.0

## Reactions to Criminal Court Proceedings

The information about whether children appeared at preliminary criminal court hearings or trials is incomplete, with this fact not having been documented for two in five cases (41.2 per cent) reported in the National Child Protection Survey. Of the three in five cases where this information was provided, slightly more of the children (32.5 per cent) did not appear at preliminary hearings or trials than those who had done so (26.3 per cent).

Child Present in Criminal Court	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Yes	15.0	27.6	26.3
No	30.0	32.8	32.5
Unknown	55.0	39.6	41.2
TOTAL	100.0	100.0	100.0

In comparison to the experience of children attending child welfare courts, proportionately fewer children appeared in criminal courts. Of the 51 cases in which the victims were present in criminal court, just over half (54.9 per cent) testified. Of the 28 children who testified, one in nine (10.7 per cent) was under age seven. Almost one-third (32.1 per cent) were between seven and 11 years-old. One in four (25.0 per cent) was between 12 and 13 years-old; another quarter (25.0 per cent) were 14 and 15 years-old. Although the number of cases in which children gave testimony in criminal court proceedings is small, it is evident that in a number of instances the testimony of very young children was permitted to be given by the court. Almost three in five (57.1 per cent) of these children gave sworn testimony and about three in 10 (28.6 per cent) gave unsworn testimony. The sole reason cited why four children had not given testimony was that they were incapable of doing so on account of their young age.

Children may become upset or agitated concerning court hearings in which they are not present as well as those in which they actually appear; here, their general reactions are considered in relation to criminal court proceedings whether they were present or not present at preliminary hearings or trials.

Child's Reaction to Criminal Court	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Agitated	20.0	14.9	15.5
Anxious	10.0	11.5	11.3
Depressed	10.0	8.1	8.3
Indifferent	—	4.0	3.6
Excited	—	0.6	0.5
Other	—	6.3	5.7
Unknown	60.0	54.6	55.1
TOTAL	100.0	100.0	100.0

The principal finding obtained in the National Child Protection Survey concerning children's reactions to criminal court proceedings was that child

protection workers gave no information for over one in two cases (55.1 per cent) involved in this process. Of the remainder, the most frequently reported reactions were: agitation (15.5 per cent); anxiety (11.3 per cent); and depression (8.3 per cent).

### Proportion of Children Harmed by Criminal Court Intervention

In two in three cases (67.5 per cent) in which sexually abused children had been involved in criminal court proceedings, child protection workers reported no information concerning whether in their judgment these children had been harmed by this legal intervention. About one in 10 children (9.8 per cent), a proportion higher than that reported for cases appearing before child welfare courts, was deemed to have been harmed.

Proportion of Children Harmed by Involvement in Criminal Court Proceedings	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Harmed	20.0	8.6	9.8
Not harmed	10.0	24.1	22.7
Unknown	70.0	67.2	67.5
TOTAL	100.0	99.9*	100.0

\* Rounding error

The findings concerning whether children involved in the proceedings of child welfare and criminal courts had been harmed by these interventions is incomplete. For most of the children, child protection workers gave no information concerning this issue. On the basis of the information provided, in each instance, only a small proportion of the children was reported by workers to have been harmed.

### Outcome of Trials

Of the 1035 cases of child sexual abuse documented in the National Child Protection and Ontario Surveys, one in six (16.5 per cent C) resulted in offenders being convicted on charges pertaining to sexual abuse. Of the 462 persons charged, 171 were convicted, charges were withdrawn in one in 15 cases (6.5 per cent C) and one in 36 suspected offenders (2.8 per cent C) was acquitted.



Outcome of Trial	Male Victims (n=56)	Female Victims (n=406)	Total (n=462)
	Per Cent	Per Cent	Per Cent
Conviction	35.7	37.2	37.0
Acquittal	1.8	3.0	2.8
Charges with- drawn	1.8	7.1	6.5
Unknown	60.7	52.7	53.7
TOTAL	100.0	100.0	100.0

Of the 171 convicted offenders, slightly over half (53.8 per cent C) received prison sentences, over a third (35.7 per cent C) were put on probation and one in 17 (5.8 per cent C) was given an absolute or conditional discharge.

Sentences	Male Victims (n=20)	Female Victims (n=151)	Total (n=171)
	Per Cent	Per Cent	Per Cent
Imprisonment	15.0	42.4	39.2
Imprisonment*	10.0	15.2	14.6
Probation	65.0	27.8	32.2
Probation*	5.0	3.3	3.5
Discharge	5.0	6.0	5.8
Other	—	5.3	4.7
TOTAL	100.0	100.0	100.0

\* Additional conditions, e.g., mandatory treatment.

## Summary

The Committee recognizes the constraints that exist in relation to the allocation of resources and personnel available to child protection services. The Committee also acknowledges the crucial importance of sensitively and effectively provided assistance to sexually abused children rendered by child protection workers. These workers have a difficult and complex mandate to fulfill, one not facilitated by unjust criticism of their work.

In recognizing these concerns, however, **the Committee believes that there are commanding reasons, as documented in the child protection surveys undertaken across Canada, to conclude that the work of these services in relation to child sexual abuse must be sharply strengthened, augmented and more effectively co-ordinated with the services provided by other helping professions.**

One of the main dilemmas documented in the Committee's research is that, in many respects, child protection workers serving sexually abused children worked too much on their own and did not co-operate closely or effectively enough with other public services. **The findings show that there was fragmentary and insufficient contact with medical services and that relations with the police were often brief and did not result in joint co-operation or follow-up. Many other available public services and community associations were relatively seldom turned to for assistance, counsel or co-ordination of care.**

At a time when resources for all types of public services are limited and becoming more difficult to obtain in relation to meeting potentially infinite service needs, no single group can reasonably expect that it will be assigned its full requested quota of personal and public funding. In the Committee's view, there is a more important issue than the sheer volume of resources assigned to a particular service, namely, the need for continuous and effective co-ordination of efforts between public agencies providing complementary services to sexually abused children.

**A second dilemma and, in this instance, a serious deficiency in the application of child protection practice, is the relative lack of sufficient assessment of cases of child sexual abuse and inadequate follow-up of cases assigned to the care of these workers.** The surveys' findings show that many victims, parents, offenders and the children's brothers and sisters were not interviewed by workers. Of cases resulting in either child welfare or criminal court hearings, in a sizeable proportion of these cases it was found that child protection workers either had not been involved in these hearings or trials or were uninformed about what had happened to the children in their care (or whose cases had been assigned to them for long-term monitoring).

**In the Committee's view, there can be no doubt in relation to both of these issues — the need for more complete assessments and for a more effective and long-term follow-up of cases — that the protection afforded these children must be strengthened and that this must be done promptly by the levels of government concerned.**

Throughout this chapter, the point has been reiterated that certain types of information were missing, unreported or unknown. In this regard the Committee recognizes a distinction between types of information which it would be useful to have about victims, their experience and suspected offenders, and those facts which are essential for the assessment, provision of care and follow-up of these children.

**The records of public agencies concerning persons being served are not just the personal repositories of observations made by workers. They are essential documents recording the experience, needs and outcomes of services provided to sexually abused children. In light of the reported high level of staff turnover in many child protection agencies across Canada, the need for sufficiently detailed and reasonably complete case records is even more apparent.**

This is a matter that, in the sphere of medical care, has received considerable public and professional attention and that has resulted in the professional review of patients' charts as constituting an essential and important component in relation to periodic accreditation of hospitals. An analogous review procedure is warranted in relation to the completeness and adequacy of child protection records maintained for sexually abused children.





## Chapter 29

# Intervention Strategies

A review of the child protection research literature and reports about the operation of different programs reveals that opinion and practice vary widely about the best means to intervene on behalf of, and ideally to help, sexually abused children and their families. Among the issues involved, the greatest area of disagreement revolves about the respective merits of what are referred to here as the child-centred and family-centred intervention approaches.

In its review, the Committee found that the adoption of one or other of these prototypical models, or in some instances the inclusion of elements of both approaches, varied widely across Canada. Both approaches are grounded on two fundamental premises of social work, namely, a recognition of the inherent worth of all persons, and an acknowledgment of their right to receive assistance. The main intervention strategies in some degree allow for the provision of services for each person involved in an incident of child sexual abuse. Beyond these common elements, the children served by child protection workers adhering principally to one approach are served substantially differently than those cared for by workers following the alternate means of intervention. Where these contrasting models of intervention differ is in the relative emphasis given to:

1. The involvement of legal, enforcement, health and other social service professionals in the assessment of and intervention on behalf of cases served by child protection agencies.
2. The adoption of a child-oriented or a family-oriented approach in the provision of services.
3. The belief that child sexual abuse is a distinctive problem to be dealt with separately from other problems affecting the well-being of children and their families, or whether it is a problem inextricably bound up in more deeply rooted familial difficulties, and as such, that it cannot be effectively dealt with by itself.

In this chapter, the development of these different approaches is reviewed, an outline is given of the main assumptions of the two principal approaches, and findings drawn from the National Child Protection Survey and those

undertaken in Quebec and Ontario are considered in relation to the operation and consequences for sexually abused children of these intervention strategies.

## Development of Different Approaches

In undertaking its review of child protection services for sexually abused children, the Committee found that relatively little had been written concerning the Canadian experience about the different ways of organizing and providing these services or comparing their relative effectiveness in achieving their intended purposes. As noted in the review of provincial child welfare legislation, these statutes do not define child sexual abuse nor do they set out with precision the procedures to be followed in the assessment of these cases. The operational practices that have evolved come in part from a broader tradition in the child welfare field involving the provision of assistance to neglected children and their families, and in particular, have been influenced by developments in the United States concerning the care of sexually abused children.

Although several distinctive intervention strategies in relation to the provision of services for sexually abused children have been in operation across Canada for a number of years, the Committee found that the staff of these programs often either did not know of the existence of other programs or that they had little information about how they operated. Instead, there has been a proclivity to visit and compare Canadian experience with programs elsewhere, primarily those initiated in the United States. In each instance, where a major Canadian program has been developed, either American research has been cited as justification to develop the new program, the senior persons involved in promoting or administering these services have visited or consulted American programs, or American experts have been invited to Canada to consult with child protection personnel. Because of this ingrained feature, it is pertinent to consider briefly the nature of the programs drawn upon as the basis for developing and justifying the various Canadian intervention strategies.

On the basis of reports provided to the Committee by the *United States National Center for Child Abuse and Neglect*, it appears that up to 1982, there had been no comprehensive comparative review for that nation of the growing number of special programs developed to serve sexually abused children.<sup>1</sup> Since most of the programs had been in operation for a short time, the research undertaken had focussed on the organization and provision of services and had not dealt directly with a consideration of their impact in benefitting children. In this connection, the *U.S. National Center* noted the ethical and practical difficulties involved in setting up experimental and control child protection services and the absence of appropriate and agreed upon criteria upon which to base such evaluations. In this regard, the findings obtained for Canada by means of the National Child Protection Survey draw upon and compare the experience of programs which have evolved for different historical reasons. In recent times, it is generally recognized that in his 1962 report on the *Battered-Child Syndrome*, paediatrician Henry Kempe of Denver drew wide public and



professional attention to the complex issues involved in child abuse, the need for a team approach and the requirement that there be long-term follow-up of these children. At that time, Kempe advocated that medically verified cases of child abuse should be reported to the police, that physicians should be familiar with how to assemble reliable forensic evidence and that there should be a close liaison between physicians, child protection workers, the police and the courts.

On the question of to whom these reports should be made, and whether the submission of such reports should be mandatory or made on a discretionary basis, a cleavage occurred that was to remain a central point of contention in the field of child welfare. In Kempe's report and the guidelines subsequently proposed by the U.S. Children's Bureau, it was recommended that there be mandatory reporting to the police of all suspected cases. It was argued that where criminal acts were suspected, they should be investigated by the police who were accessible on an around-the-clock basis.<sup>2</sup> In contrast to this position, the American Humane Society issued its guidelines in 1963 which recommended that reports of child abuse should be made to child protection services. Social workers, it was asserted, were better prepared to deal with these problems than were the police and they were able to provide abused children with needed counsel and treatment.

The guidelines recommended by the U.S. Children's Bureau were also rejected by the American Medical Association on the grounds that physicians had been singled out as the only professional group responsible for reporting. The Association was also concerned that the mandatory reporting of cases would be counterproductive, since parents of injured children would avoid bringing them to receive medical care.

The substance of this debate as to which system — civil law or criminal justice — should be responsible for the management of child sexual abuse is still an unresolved and contentious issue. Over a decade and a half after the issuing of his 1962 report, Kempe reiterated his previously expressed concerns. In his 1978 Aldrich Lecture to the American Academy of Pediatrics, he called for a developmental approach to the long neglected problem of child sexual abuse. He argued that such abuse must be stopped — absolutely. Disagreeing with the growing emphasis upon family therapy and reunification, Kempe concluded that: "reuniting families should not be the overriding goal. Rather, the best interests of the child should be served."<sup>3</sup> In order to achieve this purpose, Kempe argued that the jointly provided services of professionals in social work, law and medicine were required. He also recognized the need to adjust and evaluate constantly the services being provided. "Ultimately, treatment can be judged to be successful only many years later, when the child has grown up and made a success of life."

The *U.S. National Center for Child Abuse and Neglect* has identified a number of programs in the United States developed for the care of sexually abused children.<sup>4</sup> The most distinctive of these programs in terms of their contrasting philosophies are the Sexual Assault Center of Seattle and the Child Sexual Abuse Treatment Program of Santa Clara County, California. Other

programs have also been established in: Washington, D.C.; Chicago; Philadelphia; and Knoxville.

The review of reports of the American experience with different intervention strategies providing services for sexually assaulted children indicates that firm conclusions cannot be drawn from these sources in relation to a number of important issues. This research has focussed more on the organization of intervention models than on the outcomes achieved by these services. The documentation available on occasion relies on an inadequate methodology, deals with the experience of small and unrepresentative groups of persons, does not sufficiently indicate the nature of the protection provided, and does not focus on the long-term experience of victims or offenders. Until these and other types of information are available, it is premature to consider one or another of these approaches as having unmistakably been a "proven" success.

The American experience with different intervention strategies illustrates the difficulties involved in the selection of appropriate measures as the basis for the comparison of the efficacy of different programs. It is apparent, for instance, that assessing the proportion of families that stay together following an episode of child sexual abuse, or the proportion of families which may be reunified after such incidents, are not by themselves sufficient measures of the nature of the protection afforded children, or of whether the sexual abuse has in fact been stopped. It is evident for Canada that comprehensive and reasonably firm documentation and evaluation of these kinds of programs is essential, and that in this regard, only a modest and incomplete start has yet been made.

## Child-centred Approach

This intervention approach combines the elements of interdisciplinary teamwork, a victim orientation and the use of child protection workers who are specifically trained to deal with cases of sexual abuse. Its strategy is equally applicable in situations where the victim lives or does not live in proximity to the offender. Its philosophy rests on three assumptions:

1. The primary focus of service should be the victim, even though considerable attention may be paid to the offender.
2. Any type of sexual contact between minors and adults is considered to be morally wrong and damaging to the child.
3. The adult offender is totally responsible for any abuse which occurs.

With these assumptions in place, the model labels child sexual abuse as a crime and relies upon the criminal justice system as an essential procedural element. Inherent in this approach is the co-ordination of treatment between medical and child protection services which are deemed to be essential to assure protection for the child.



In the review of Special Community and Social Service Programs, it was noted that a number of interdisciplinary teams and co-ordinating committees had been developed in several parts of Canada. This type of liaison has operated effectively in some communities on an informal basis; it has included social workers, police, physicians, teachers, Crown prosecutors, ministers and other persons. In these communities, the idea of establishing interdisciplinary teams in neither a new nor a revolutionary development.

What has changed in recent years is the formalization of these of initially loosely structured practices and the evolving comprehensiveness of the scope of the services provided. This model now draws upon personnel from child protection agencies and medical settings, the police and Crown prosecutors working together and following standardized guidelines for the intervention and co-ordination of their efforts to help abused children. Where this model is followed, teams with representatives from these fields meet on a regular basis to discuss new cases and follow up open cases. Decisions about the children and their families are arrived at jointly.

Just as the philosophy of the model seeks to engender a smooth co-ordination among all services dedicated to the protection of abused children, it also takes as its primary concern the well-being of the child. From the initial reporting of an allegation of sexual abuse, the needs of the victims are considered to be paramount. It is considered essential that each person meeting the victim communicates that his or her account is believed, that he or she has done nothing wrong, that he or she is not responsible for what may happen to the offender, and that he or she realizes that assistance will be provided.

The victimized child must only describe the sexual abuse incurred to as few outsiders as possible, typically, the child protection worker and the investigating police officer, who in turn, share this information with other members of the interdisciplinary team. Where it is deemed necessary, a medical examination may be undertaken to assess and treat injuries. Additional intervention may include: crisis intervention or long-term counselling by child protection workers; individual and/or group therapy by the staff of a hospital's sexual abuse unit; or treatment and counselling by community family doctors and psychiatrists. Family therapy, with or without the offender, may also be undertaken.

In cases where offenders reside with victims, they are required to leave the home. Wherever possible, the apprehension of the child is avoided. It is recognized in the child welfare field that the child's removal from his or her home and placement in an alien environment risks compounding any emotional injuries that may have already been suffered by young victims. Removal from the family may also contribute to the child's feeling of guilt and worthlessness.

Before deciding whether it is appropriate to leave a child in the custody of the non-offending parent, the child protection worker involved in the initial investigation of the case must make an assessment of the non-offending parent (usually the mother). If the victim-oriented goals of the model are to be



achieved, the child must remain in an environment which affords him or her the maximum degree of emotional support. Thus, the non-offending parent, almost invariably the mother, will be left in charge of the victim only if her words and actions indicate that she does not blame the child, that she believes the child's complaint, and that she will be emotionally supportive (e.g., will place no pressure on the child to withdraw or alter his or her complaint). Also, the custodial parent must be willing to abide by any court order that prohibits the offender from having any communication or contact with his family. If the non-offending parent does not fulfill these requirements, it may be necessary to remove the child from the home.

Realizing the impact that the abusive situation may have on the non-offending parent, she (he) is provided with help, counselling and financial/environmental assistance from the child protection agency and group therapy (with a strong emphasis on assertiveness-training) from the children's hospital.

Simultaneously, if the initial investigation uncovers evidence that a serious sexual offence has been committed against a child by a parent or guardian and it appears that the child is in imminent danger of further harm, an investigating police officer is immediately required to arrest the offender and to charge him under the *Criminal Code*. In less severe cases, the police are instructed to consult with the staff of the child protection agency and medical personnel and to obtain permission from a Crown prosecutor before laying criminal charges.

A number of benefits may result from this policy emphasizing the charging of sexual offenders. First, by arresting the offending parent as quickly as possible, the victim is removed instantly from further peril. Second, arresting the offender is seen as a salutary means of breaking down his power over the rest of the family. Finally, it is argued that application of this policy is of therapeutic value to the offending parent. Advocates of charging contend that the shock of being arrested can break down the abuser's rationalizations that there is nothing wrong with his relationship with other members of his family; the arrest is seen as an "icy shower" capable of bringing the offender to his senses and making him realize that he has a serious behavioural problem. Moreover, the prospect of being sent to prison may frighten the abuser into agreeing to receive treatment. Thus, proponents of this model of child protection argue that the policy of arresting sexually abusive parents serves the best interests of both the child and the offender.

Recognizing the culpability and pathology of the offender, before proceeding along these lines, the advocates of this model seek to evaluate the situation not only of the victim but also that of the offender. A psychological assessment of the abusing parent may be ordered (and is usually carried out by a private practitioner) to determine the severity of the accused's psychosocial problems. When the offender has been charged with a less serious offence, the findings from this assessment may influence the decision on how to proceed. Where appropriate, the offender charged with a less serious offence is offered a choice between seeking treatment and being tried for his offence. The abuser usually is released on his own recognizance, with the stipulation that he abstain from

having any communication with his family. The primary avenue of treatment, where prosecution is stayed, is a unit operating in a children's hospital. Any failure by the abusive parent to attend treatment sessions, or to make a serious effort at correcting his behavioural problems, is reported in writing by the treatment facility to the Crown prosecutor; such lapses may trigger a resumption of prosecution. Thus, the offender is given a tangible incentive to work earnestly at rehabilitating himself.

Where the decision is made to proceed to trial in the case of an offender charged with a less serious offence, and the accused is convicted, he is often placed on probation conditional upon his seeking treatment. It then will be the responsibility of the offender's probation officer to arrange treatment and monitor the probationer's progress. Ideally, the probation officer reports back to the child protection agency as to any improvement in his client.

Where an abusive parent has been charged with a more serious offence (e.g., sexual intercourse with the victim), the policy dictates that there be no discretion to stay prosecution: the accused must stand trial. Every effort is made to persuade the accused to plead "guilty", and then to offer him treatment. Such treatment continues up to the sentencing date. If the personnel providing treatment feel that the accused's treatment will be cut short prematurely by an early trial date, they will so advise the Crown prosecutor who then may move for a postponement. Where the accused has pleaded "guilty" to, or has been convicted of, a more serious offence, he generally is required to serve a prison sentence. Although hospital personnel visit the prisoner occasionally, these visits only constitute a support service.

If the abusing parent is to be tried for his offence, the legal system continues the efforts made by social services, police and medical personnel to provide emotional support for the victim. Certain Crown prosecutors are assigned to child sexual abuse cases; these prosecutors have developed special skills in communicating with the sexually victimized child. A standard practice of these Crown prosecutors is to take the victim into an empty courtroom before the commencement of the trial, and explain the workings of the court to him or her. The child is thereby placed at ease in an otherwise forbidding environment and is given some sense of what to expect when called upon to testify. In an effort to reduce the potential trauma to the child still further, the Crown prosecutor usually moves to have the court cleared during the child's testimony. In child protection proceedings, the Committee learned that on occasion testimony is given in the Judge's Chambers. The Committee has no means of assessing the success or failure of this approach.

In summary, the main purpose of the child-centred approach is that all members of the interdisciplinary team should focus their intervention primarily on the child, while also providing service to others involved in the problem.



## Family-centred Approach

In contrast to the child-centred approach, the distinguishing features of the family-centred approach are its emphasis upon multidisciplinary consultation, its family orientation and its reliance upon the employment of child protection generalists. The adoption of this intervention strategy is most relevant in situations where the victim and offender are related. Its philosophy rests upon three main premises.

1. The primary focus of attention is the family and it is within the context of meeting its needs that those of the sexually abused child are best served;
2. Children have the inalienable right not to be assaulted, and they are entitled to live in their natural homes.
3. Intervention in the affairs of a family is more effectively and ethically achieved when this is done on a voluntary basis.

Inherent in this philosophy is the assumption that the criminal justice system should be used as a last resort, since, by necessity, it is disruptive to the family, including the victim. In contrast to the emphasis upon interdisciplinary teamwork in the child-centred approach, it is a characteristic of this model to regard legal, health and other social services as supplementary to the work of child protection personnel. Decisions concerning cases are made according to standardized guidelines set down within the agency; consultation with experts in social work, medicine or psychology enhances the decision-making process. In this regard, the agency acts as the co-ordinator among all organizations which may be involved with the family and serves as an overseer of the child's best interests.

In light of its conceptual premises, it is not surprising that this model stresses therapeutic intervention rather than reliance upon the criminal justice system. It is believed by advocates of this model that recommendations are rarely made involving the laying of charges against an offending parent. Where there is reason to believe that a child is in trouble and requires assistance, the standard procedure is to assess the needs of the child and his or her family, and based on the assessment, to propose voluntary measures to the child and his or her parents. These voluntary measures may include the family's acceptance of any of a variety of services, including: visits by a social worker; family counselling; temporary placement of the child in foster care; and medical or psychiatric care. By offering these services to family members as voluntary measures which require their consent, it is believed that the family's co-operation can usually be obtained without necessitating formal legal action. The implementation of these voluntary measures is carefully scrutinized and regularly reviewed to ensure that they remain responsive to the needs of the child and his or her family.

Only where the family in question refuses to consent to the proposed voluntary measures, and the child's situation remains unsatisfactory, is formal legal action taken. The family is brought before a child welfare court or, less



often, the offender may be tried in criminal court. In cases necessitating judicial involvement, a child protection worker may act on behalf of the child, ensuring that the court is informed of the child's wishes and feelings. Where a child must appear in court, the agency provides an escort in order to provide comfort and emotional support.

This model also takes into account the fact that there are certain situations in which the child is in real and imminent danger, and cannot remain with his or her family without being subjected to an unacceptable risk of harm. In such situations, emergency measures are applied. The child is apprehended and placed in foster care until a court hearing is convened to have the child declared to be in need of protection. Even after such a declaration has been made, the agency's first priority, according to this model, is to provide treatment and service aimed at restoring the family to a safe, adaptive environment for the child, and ultimately, at reuniting the child with his or her parents. Such treatment may involve family therapy or counselling for family members.

The approach to intervention represented by this model is clear in principle: the decreased use of the criminal justice system and an emphasis on the promotion of voluntary therapy primarily provided by child protection workers. Stemming from this orientation is the perspective that child sexual abuse by a family member is only one, but a severe symptom of family instability which includes other difficulties and stresses which must be ameliorated to ensure that the abuse of the child will be stopped. In undertaking this demanding form of intervention, it is believed that child protection workers experienced in a wide range of casework techniques are best suited to work with these children and their families.

## Comparison of Intervention Approaches

The conceptual premises of the two prototypical approaches involving the provision of child protection services for sexually abused children have been outlined as they are optimally expected to be applied in practice. In each instance, the application of these premises is contingent upon the training and professional altruism of the workers involved, the nature of the financial and manpower resources available to child protection services, the flexibility and spirit of innovation kindling the work of the organizations providing these services and, above all, the concerns and demands of the persons living in the communities being served.

In its meetings with experienced child protection workers across Canada, the Committee found that in provinces, or regions within provinces, where the principles of either of the two main intervention approaches had been adopted, each was accorded considerable loyalty by the workers involved. From the perspective of child welfare theory, each approach has decided strengths and weaknesses.

In the child-centred approach, the formation of an interdisciplinary team enables a sexually abused child and his or her family to receive help from several specialists whose services are complementary. The work of the team is intended to streamline the provision of needed care and provide maximum protection for the child. The sharing of information by a team decreases the necessity for the child to repeat the intimate details of the offence to several outsiders. Co-operation with the criminal justice system heightens the chances of laying charges and of successfully obtaining convictions or agreements by offenders to receive counselling and/or treatment.

Where teams have been established, the regular and continuous review by interdisciplinary members may serve as a means to reduce stereotypical and derogatory biases about the abilities of other professionals and replace these by a sense of mutual respect. (Discussions held with a considerable number of professionals revealed that they often saw their profession as the only one capable of helping the sexually abused child).

According to the 1982 report of the *Metropolitan Toronto Chairman's Special Committee on Child Abuse*:

Joint investigations by the Police and the C.A.S. produce many problems from the perspective of both agencies. C.A.S. workers are concerned, for example, that the Police in some circumstances appear reluctant to initiate or continue an investigation. They are also uncertain as to their role once the Police are involved. The Police, on the other hand, are anxious that the C.A.S. not interfere with the offender and that they maintain their distance during the Police investigation. The Police also feel that C.A.S. workers have unrealistic expectations as to their capacity to predict the result of criminal proceedings. In their view, joint consultation is only useful if it occurs immediately after the offence is reported and investigated.<sup>5</sup>

Similar concerns have been raised by participants in a child welfare-criminal justice workshop in British Columbia: confusion over roles, frustration at the lack of results achieved by other professionals, lack of understanding of other services and inadequate training about sexual abuse by other disciplines, as well as their own.<sup>6</sup> In commenting upon these problems from the perspective of a program which had been in operation for several years, the Co-ordinator of the Child Abuse Program in Manitoba recognized that "there is a growing need for 'teamwork' development, i.e., training packages which assist regional teams to define their roles and responsibilities, outline clear procedures and processes".<sup>7</sup> Many of these problems stem from interdisciplinary ignorance, a lack of procedural consensus and contrasting views about how best to proceed in serving the interests of sexually abused children. An increased level of co-operation between the professionals involved in assessing and intervening in cases of child sexual abuse, if coupled with clear, standardized guidelines on professional roles, might serve to alleviate some of the present difficulties in the present interdisciplinary system of protecting children.

Conversely, a system of multidisciplinary consultation, as contrasted to interdisciplinary teamwork, also has distinct advantages. In this system in which one agency retains the position of primary care giver, children may be



less likely to be lost in interagency shuffles. Prestigious and powerful professionals cannot coerce or direct the actions of less socially esteemed or powerful colleagues. The problem of a betrayal of ethics by breaching pledges of confidentiality may be lessened. Front-line professionals, overwhelmed by substantial caseloads, may be spared the further burden of a continual series of additional meetings.

The victim-oriented stance of the child-centred approach ensures maximum physical protection for the child, while not depriving him or her of the familiar comforts of home. Through its belief in the veracity of children and its labelling of sexual abuse as criminal behaviour, it provides the victim with an emotionally vindicating experience; in effect, it says to the child: “society thinks what was done to you was wrong, no matter what you did, and will punish the offender who hurt you”. Accordingly, the child is afforded protection under the law.

The family-oriented approach, in its turn, may be more sophisticated about the psychosocial dynamics of families. It strives to minimize the emotional, social and economic impact that the separation of the family may have on all of its members, including the victimized child. The child is thus not placed in the position of believing that he or she has been responsible for having sent his or her father to jail, or of reducing his or her mother to becoming a welfare recipient.

The family-centred approach of seeking to obtain the voluntary consent of family members to receive counselling and other recommended services provides a safeguard against the possibility that a court hearing may deny an agency’s application to have a child found to be in need of protection, or to involve itself with a suspected offender who is found to be guilty, thus leaving child protection workers in an untenable position in working with hostile families. This approach is designed to ensure that, in practice, the criminal justice system either does not impinge, or that this type of intervention occurs infrequently, upon the integrity of the family.

The application of the family-centred approach presupposes that child protection workers can reach these crucial decisions about the best means of protecting sexually abused children and serving the needs of their families largely upon the basis of their own professional judgment and that of their immediate colleagues or supervisors. As the findings given in Chapter 28, *Provision of Child Protection Services*, have shown, the decisions reached in many cases may fail to achieve these intended purposes. The application of this approach may also inadvertently give rise to a situation where the offenders in a family are enabled to continue to commit offences proscribed by the *Criminal Code*.



## Operation of Intervention Strategies

Recognizing the different aims, benefits and limitations of the two main intervention strategies adopted in relation to the provision of child protection services for sexually abused children, the Committee considered the findings about the operation of contrasting programs in light of its assigned mandate. In each instance, it was recognized that there would likely be a gap between the purposes ideally intended and their actual implementation in practice.

The findings obtained about the operation of these different intervention programs are more cogent than those which might be obtained in an artificially contrived experimental study since they pertain to services which were actually being provided. In this regard, the findings afford an unusual review of the consequences of the decisions taken in relation to the care of these children.

**On the basis of their conceptual premises, it would be expected that the operation of each main intervention approach would result in proportionately more or fewer types of particular services being provided to victims and their families. In the case of the child-centred approach's philosophy, for instance, it would be expected that its implementation would entail: a relatively high level of interdisciplinary involvement; without the requirement of court orders, a low level of counselling received by offenders and spouses; a high proportion of children remaining at home; after notification had occurred, a low proportion of offenders remaining at home; a high proportion of children living at home without offenders during or towards the end of an agency's intervention; a high level of cases being brought to child welfare court; a high proportion of charges being laid against suspected offenders; and a relatively high level of convictions obtained in criminal court.**

**In contrast, except for a high proportion of children remaining at home, it would be expected that the operation of the family-centred approach would produce results opposite to the intended outcomes of the child-centred approach.**

The findings obtained by the National Child Protection Survey and those for Quebec and Ontario indicate that:

1. On a regular basis, two provincial child protection programs tended to follow the child-centred approach.
2. Two provincial child protection programs tended to follow the family-centred approach.
3. Other provinces variously adopted elements of both intervention approaches, and in some instances, appeared to have no consistent operational approach in serving sexually abused children.

The findings given in Table 29.1 group together the results for the two provinces following the child-centred approach and those for the two provinces following the family-centred approach. The results for the other provinces are listed separately. To highlight the nature of the services provided, the findings

are given as a proportion of the cases documented for particular jurisdictions. There is no identification of the experience of particular provinces (the results for the Yukon were not included since only a small number of cases was documented). Because of the sensitive and evaluative nature of the research undertaken, it was agreed, as a condition of obtaining this information, that the anonymity of particular programs would be preserved. The findings clearly show, however, that in seeking to serve the needs and interests of sexually abused children, there is a need for more sunshine concerning the public review of these programs.

## Promptness of Initial Assessment

In relation to how quickly the initial assessments of sexually abused children were undertaken, the child-centred approach ranked second in this regard, while the family-centred approach ranked the lowest among all jurisdictions. These trends also occurred with respect to the proportion of victims having a medical examination. In each instance, there was a prompter assessment of the needs, both psychological and medical, of children served by the child-centred approach than those served by the family-centred approach. The experience of programs in other provinces varied in both of these respects.

## Contacts With Other Services

Workers following the family-centred approach were the group which most frequently contacted other types of social services, and conversely, made proportionately the fewest contacts with the police, and were above average in terms of consulting physicians. In contrast, children served by workers following the child-centred approach had a high proportion of contacts made on their behalf with physicians and the police, and other types of social services were initially contacted in only one in eight cases. One other province tended to follow this high level of interdisciplinary consultation, while in four provinces, there was a relatively low level of contacts with physicians, and in two provinces, there were infrequent contacts with the police.

## Family Members Contacted

Regardless of the intervention approach followed, the results were generally comparable in all parts of the country in relation to contacts made with different family members. However, in relation to the types of family members who had not been contacted, some remarkable variations occurred among specific provincial programs. Instances where no contacts had been made included: two in five victims (38.1 per cent); one in three mothers of victims (33.3 per cent); three in four fathers (76.1 per cent); four in five siblings (80.9 per cent); and over nine in 10 suspected offenders (95.2 per cent).

Table 29.1

## Services Provided Sexually Abused Children by Provincial Child Protection Programs

Services Provided and Outcomes for Sexually Abused Children	Provincial Programs							
	Child-Centred Approach (Two Provinces)	Family-Centred Approach (Two Provinces)	Province Five	Province Six	Province Seven	Province Eight	Province Nine	Province Ten
	Non-Accumulative Percentages							
Immediate Assessment Organizations Contacted <ul style="list-style-type: none"><li>• Other Social Services</li><li>• Physicians/Hospitals</li><li>• Police</li></ul> Persons Contacted <ul style="list-style-type: none"><li>• Victim</li><li>• Mother</li><li>• Father</li><li>• Brothers/Sisters</li><li>• Offender</li></ul> Medical Examination	69.6	28.7	41.4	76.1	60.0	50.0	—	54.2
	12.9	38.0	7.1	17.4	12.5	—	—	5.1
	56.7	25.4	18.2	73.9	21.9	4.8	—	25.4
	83.6	25.9	57.6	89.1	38.1	42.9	—	52.5
	89.5	78.4	75.8	91.3	71.3	61.9	—	72.9
	83.0	80.5	66.7	89.1	70.6	76.2	—	79.7
	36.3	60.8	27.3	23.9	40.0	33.3	—	30.5
	50.9	40.6	35.4	73.9	35.0	19.1	—	42.4
	47.3	59.6	23.2	82.6	33.1	4.8	—	39.0
	56.7	27.1	30.3	63.0	45.6	38.1	56.7	61.0
Child Protection Services <ul style="list-style-type: none"><li>• Counselling victim</li><li>• Counselling offender</li><li>• Counselling family</li><li>• Marital therapy</li></ul>	57.9	34.2	26.3	71.7	54.4	47.6	22.4	55.9
	19.3	33.5	7.1	60.9	20.6	9.5	12.7	13.6
	30.4	33.3	8.1	50.0	28.1	61.9	—	27.1
	8.2	1.2	6.1	15.2	16.9	9.5	—	10.2



Table 29.1 (continued)

Services Provided Sexually Abused Children by Provincial Child Protection Programs

Services Provided and Outcomes for Sexually Abused Children	Provincial Programs									
	Child-Centred Approach (Two Provinces)	Family-Centred Approach (Two Provinces)	Province Five	Province Six	Province Seven	Province Eight	Province Nine	Province Ten	Non-Accumulative Percentages	
<i>Child Protection Services</i>										
• Family therapy	22.2	0.5	19.2	15.2	28.8	14.3	—	28.8	14.3	28.8
• Victim/offender counselling	6.4	0.2	—	—	2.5	—	—	5.1	—	5.1
• Psychotherapy: victim	4.1	—	—	8.7	3.1	14.3	6.6	8.5	—	8.5
• Psychotherapy: offender	2.9	0.2	1.0	19.6	3.8	4.8	10.5	5.1	—	5.1
• Psychotherapy: family	2.3	—	—	—	1.9	14.3	—	—	—	—
• Crisis intervention: victim	9.4	0.7	—	—	22.5	47.6	—	3.4	—	3.4
• Crisis intervention: offender	2.3	1.0	—	—	12.5	19.1	—	—	—	—
• Crisis intervention: family	5.3	1.0	—	—	21.9	33.3	—	—	—	—
• Group therapy: victim	17.0	—	2.0	17.4	5.6	—	11.6	6.8	—	6.8
• Group therapy: offender	1.8	—	—	4.4	1.9	—	11.6	—	—	—
• Group therapy: family	2.9	—	1.0	4.4	3.1	4.8	11.6	1.7	—	1.7
• Counselling/treatment services accepted voluntarily	5.9	30.4	4.0	4.4	10.6	9.5	—	10.2	—	10.2
<i>Separation of Family</i>										
• Child remains initially	31.0	72.9	34.3	30.4	36.3	47.6	63.8	44.1	—	44.1
• Offender remains initially	36.3	18.8	39.4	28.3	47.5	47.6	30.3	44.1	—	44.1

(Continued...)

**Table 29.1 (concluded)**  
**Services Provided Sexually Abused Children by Provincial Child Protection Programs**

Services Provided and Outcomes for Sexually Abused Children	Provincial Programs							Province Ten
	Child-Centred Approach (Two Provinces)	Family-Centred Approach (Two Provinces)	Province Five	Province Six	Province Seven	Province Eight	Province Nine	
	Non-Accumulative Percentages							
<i>After Assessment</i> <ul style="list-style-type: none"><li>• Family together</li><li>• Parent and child</li><li>• Parents together</li><li>• Offender and child</li><li>• Family apart</li></ul>	11.7	20.0	16.2	10.9	15.0	19.1	—	20.3
	24.6	8.1	19.2	13.0	16.9	33.3	—	20.3
	21.6	7.1	21.2	15.2	16.3	4.8	—	20.3
	1.8	—	3.0	—	1.3	—	—	—
	19.9	0.5	16.2	56.5	20.0	9.5	—	18.6
<i>Present Residence of Child</i> <ul style="list-style-type: none"><li>• In foster care</li><li>• Living on own</li><li>• With relatives</li><li>• With family without offender</li><li>• With family with offender</li></ul>	40.4	10.7	19.2	19.6	31.9	14.3	—	32.2
	4.1	0.2	3.0	10.9	10.0	4.8	—	1.7
	4.1	1.2	6.1	6.5	8.1	9.5	—	5.1
	28.1	3.1	25.3	37.0	21.3	33.3	—	32.2
	16.4	22.6	20.2	19.6	15.6	19.1	—	22.0
<i>Court Hearings</i> <ul style="list-style-type: none"><li>Child Welfare Court</li><li>Charges laid</li><li>Offender convicted</li><li>Case Closed</li></ul>	5.9	6.4	4.0	—	5.0	14.3	3.7	6.8
	46.8	13.8	33.3	56.5	24.4	9.5	32.2	37.3
	40.4	8.1	33.3	54.4	19.4	23.8	58.7	27.1
	16.4	4.8	14.1	28.3	11.3	19.1	17.7	13.6
	27.5	4.5	59.6	21.7	23.1	21.7	17.7	40.7

The findings indicate that there was no consistent practice across Canada with respect to contacting different family members of victims to obtain information concerning the cases being assessed, or where siblings also lived with resident suspected offenders, to ascertain the nature of the risks which they may have been facing.

## Counselling and Therapy

As noted in Chapter 28, *Provision of Child Protection Services*, on average, child protection workers were found to provide a relatively limited range of services directly to victims and their family members. This finding is reaffirmed when the experience of different provincial programs is considered.

With two exceptions, those involving counselling by workers to suspected offenders and family counselling, the child-centred approach consistently provided more kinds of services to victims and their families than did the family-centred approach. Both intervention strategies were about equally likely to offer family counselling, with the family-centred approach doing this marginally more often than the child-centred approach. A sharp contrast occurred in the provision of counselling to sexually abused children: three in five (57.9 per cent) children served by the child-centred approach and one in three (34.2 per cent) served by the family-centred approach had received counselling from child protection workers.

## Services Accepted Voluntarily

Although the child-centred approach, on average, provided more and a wider range of counselling and treatment services than the family-centred approach, these services were not as often accepted on a voluntary basis when the former rather than the latter approach was adopted. With the exception of the two provinces adopting the family-centred approach, elsewhere across Canada, the counselling of family members was typically received on an involuntary basis.

The family-centred approach is founded on the belief that the counselling provided by workers should be voluntarily received by the persons being helped. In about one in three cases (30.4 per cent), this purpose was realized, a level four times that of the child-centred approach. Despite this significant difference, however, the main finding in relation to how family members received counselling is that under all programs, regardless of the approach adopted, the great majority of family members received counselling on an involuntary basis.

## Separation of Families

After provincial agencies learned of cases of child sexual abuse, in five provinces about two in three children were removed from their homes, in two provinces approximately a half were removed, and in three provinces between



two in three and three in four remained at home. These findings show that after notification of an incident of sexual abuse, whether a child was left at home or was removed is both a function of residence and the application of different child protection intervention approaches. In this regard, there was no uniform or consistent social policy across Canada.

This difference is the sharpest in relation to the operation of the two main intervention strategies. About one in three children (31.0 per cent) served by the child-centred approach initially remained at home. In contrast, over seven in 10 children (72.9 per cent) served by the family-centred approach initially remained at home.

The different programs across Canada and the two main intervention approaches also differed substantially in relation to whether the resident suspected offenders initially remained at home following notification to child protection agencies. The range in variation fluctuated by more than 100 per cent. In the family-centred approach, over four in five suspected offenders (81.2 per cent) were removed, a proportion that is about a fifth higher than cases served by the child-centred approach (63.7 per cent). Both approaches, however, were more likely to involve the removal of suspected offenders than was the case in four provinces where a higher proportion of suspected offenders stayed in the same homes with victims.

## Present Location of Child

There is a 300 per cent variation across Canada in relation to the proportion of sexually abused children placed in foster care. Of children served by the child-centred approach, two in five (40.4 per cent) were in foster care, a proportion which contrasts with the about one in nine children (10.7 per cent) served by the family-centred approach. Considerably more of the children cared for by the child-centred approach than those served by the family-centred approach were likely to be living with their families without offenders being present, with relatives or on their own. An anomaly in the results obtained for the family-centred approach is that when the survey was undertaken, information on the whereabouts of almost three in five children (55.8 per cent) was unknown or was not reported. Since well over nine in 10 (95.5 per cent) cases were still open which were being served by agencies adopting the family-centered approach, this finding cannot be construed as being particularly reassuring in relation to the adequacy of their continued monitoring and followup.

## Court Involvement

Corresponding directly with their enunciated premises concerning the use of legal sanctions or voluntary measures, the findings indicate that the two

main intervention approaches followed by child protection services make substantially different use of both child welfare and criminal courts. Of the cases served by the child-centred approach, there were between three and five times as many court hearings than those held for children served by the family-centred approach. Across Canada, three different trends occurred with respect to court hearings involving cases of child sexual abuse. On average, in four provinces a relatively high level of cases came to court, three provinces fell within an intermediate range, and in the three remaining provinces, the great majority of cases were handled without court intervention. On average, there is a direct relationship between the proportion of cases brought to criminal court and the proportion of offenders convicted.

## Summary

In considering the findings of the National Child Protection Survey, the Quebec Survey and the Ontario Survey, the Committee also took into account the results of the other national surveys undertaken. From all of these sources, there is comparatively little documentation about the nature of the long-term effects of child sexual abuse, particularly in relation to the psychological harms which may have been incurred. In this regard, it was a consistent finding in the population, police and hospital surveys that while proportionately more victims were psychologically and emotionally harmed than those who were physically injured, the number of children known to have sustained any type of reported harm or injury was relatively small.

In the context of these general findings, it is recognized that the nature of the long-term benefits for sexually abused children resulting from the adoption of either of the two main child protection intervention strategies is unknown. Obtaining this type of information would entail the mounting of a carefully designed longitudinal study which obtained information from victims over a period of years. Even then, the results so obtained would likely be ambiguous and uncertain in their social policy implications unless the approaches being monitored were distinctively different at the outset in most salient aspects.

Before comparing the relative strengths and weaknesses of the main child protection intervention strategies and the nature of their short-term benefits for sexually abused children, it is pertinent to recall the findings of Chapter 28, *Provision of Child Protection Services*. Regardless of the approach taken, significant information was frequently unknown or unreported concerning essential elements in the services intended to provide protection for these children.

**Allowing for these considerations in relation to the absence of sufficient information about potential long-term harms and incomplete information for certain aspects of the protection being afforded, it is evident that the child-centred approach in comparison to the family-centred approach provides more short-term benefits for sexually abused children. These documented benefits include:**



- More promptly undertaken initial assessments.
- More victims receiving medical examinations.
- Broader and more extensive consultation with other disciplines in relation to assessing the child's needs.
- A slightly higher proportion of victims, their mothers and their siblings being interviewed.
- A substantially higher proportion of victims being counselled, and overall, the more frequent provision of a broader range of counselling and treatment services for victims and members of their families.
- In two in three cases (63.7 per cent), after notification to an agency, the resident offender was removed from the home.

The findings presented in this chapter indicate that a majority of the provinces did not follow any consistent practice in the provision of child protection services for sexually abused children. The provision of these services was unco-ordinated and lacked reasonable uniformity. While regional variation and flexibility may be hallmarks in the provision of social and medical services across Canada, their consequences for sexually abused children are that a child in one province received very different services and protection than a child in another province.

On the basis of the survey's findings, it appears that the child-centred approach is a more appropriate initial means of intervention affording more immediate protection for the sexually abused child and that the family-centred approach may be the more appropriate means of providing for the long-term assessment and care of victims and their families. However, regardless of the intervention approach initially adopted, the Committee believes it is mandatory for all cases of suspected child sexual abuse that a complete and comprehensive assessment be made of their needs and situation. In this regard, the survey's findings indicate that both main intervention approaches were seriously deficient in their application.

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, Provincial Attorneys-General, Departments of Health and Child Protection Services and non-governmental agencies:

1. Develop minimum standards of services to be provided by each of the main public services (police, medical and child protection services) in relation to the investigation, assessment and care of sexually abused children. These standards, pertaining to each service, should specify, among other considerations, that:
  - (i) Every one must report cases of child sexual abuse to the police and/or to child protection services;
  - (ii) It be mandatory that all cases of child sexual abuse that constitute sexual offences under the *Criminal Code* be reported to the police,
  - (iii) An initial assessment is to be made promptly and no later than 24 hours following notification;



- (iv) A medical assessment be made of the physical and mental state of all cases of child sexual abuse;
  - (v) There be clear documentation of services provided and that long-term monitoring be undertaken to assure that the child is at no further risk of being harmed; and
  - (vi) A procedure be established to review reports of child sexual abuse and ensure that the needs of the children are being adequately met.
2. That legislation be enacted to specify these standards and to assure that they are being met in the assessment and care of these children.

The Committee considered whether the statutory authority under which child protection services function should specify child physical and sexual abusive assessment responsibility in addition to the broad concepts of neglect and protection. As documented in the Report, there can be no doubt that more adequate assessment of cases of child sexual abuse is required.

**The Committee recommends that Provincial Ministers responsible for Child Protection Services:**

- 1. Review provincial child welfare legislation to ensure the specification of assessment procedures to be undertaken on behalf of sexually abused children.
- 2. Introduce any appropriate amendments to this effect.
- 3. Develop a standard protocol for the collection of information, assessments to be conducted, findings to be recorded and other necessary procedures (e.g., reporting, referrals, etc.).
- 4. Make this protocol widely available, particularly to those likely to have first contacts with sexually abused children and that instruction be provided in its appropriate use.

The Committee believes that the present system of providing child protection services for sexually abused children across Canada is unjust. These children must be better protected and more equitably served.

## References

### Chapter 29: Intervention Strategies

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